TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 710

PAUL V. McNUTT, GOVERNOR OF THE STATE OF INDIANA, ET AL., APPELLANTS,

vs.

McHENRY CHEVROLET CO., INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

FILED JANUARY 21, 1936.

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[fol. 1] [Caption omitted]

[fol. 2] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

In Equity. No. 1685

McHenry Chevrolet Co., Inc., Complainant,

v.

Paul V. McNutt, Governor of the State of Indiana; Philip Lutz, Attorney General of Indiana; Richard A. McKinley, Director of the Department of Financial Institutions of the State of Indiana; Oscar P. Welborn, Harvey B. Hartsock, C. M. Setser, Myron Gray and Robert Batton, Members of the Commission of Financial Institutions of the State of Indiana; Herbert M. Spencer, Prosecuting Attorney of the Nineteenth Judicial Circuit of The State of Indiana, Defendants

For Temporary and Permanent Injunctions

Bill of Complaint—Filed June 22, 1935

The complainant, McHenry Chevrolet Co., Inc., (hereinafter designated as "Retail Seller"), a corporation, brings this its Bill of Complaint against the above named defendants and respectfully shows unto this Honorable Court as follows:

First. Complainant, Retail Seller, is a corporation duly organized and existing under the General Corporation Act of the State of Indiana, is a citizen and resident thereof and has its principal place of business in the City of Indianapolis, County of Marion, State of Indiana.

The defendant Paul V. McNutt is the duly elected, qualified and acting Governor of the State of Indiana and is a resident of the City of Indianapolis in the Southern District of said State.

The defendant Philip C. Lutz is the duly elected, qualified and acting Attorney General of the State of Indiana, and is a resident of the City of Boonville in the Southern District thereof.

[fol. 3] The defendant Richard A. McKinley is the duly appointed Director of the Department of Financial Institutions of the State of Indiana, and is a resident of the City of Jeffersonville in the Southern District thereof.

The defendants Oscar P. Welborn, Harvey B. Hartsock, C. M. Setser, Myron Gray and Robert Batton are the duly appointed members of the Commission for Financial Institutions of said State, the said Welborn and Hartsock residing at Indianapolis in the Southern District thereof, the said Setser residing at Columbus in the Southern District thereof, the said Gray and Batton residing respectively at Muncie and Marion in the Northern District thereof.

The defendant Herbert M. Spencer is the duly elected, qualified and acting Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana, wherein Complainant's principal place of business is located, residing at Indianapolis in the Southern District of Indiana.

Second. This is a suit of a civil nature arising under the Constitution and Laws of the United States. The matter in controversy exceeds the sum of Three Thousand ($3,000.00) Dollars in value, exclusive of interest and costs.

Third. Retail Seller is, and since its organization in December, 1933, has been engaged as a dealer in the business of selling automobiles at retail to buyers thereof in the State of Indiana. Its business as such includes the sale of new Chevrolet automobiles, under and by virtue of an agreement with the manufacturer thereof, Chevrolet Motor Company, appointing it a dealer for the sale of new Chevrolet cars in a certain specified territory in the State of Indiana, and its said business includes also the sale of used cars acquired by it in the course of its business. In the course of its business it has sold upwards of 1,200 automobiles, new and used, of which 481 such cars, the aggregate retail prices of which amounted to approximately $164,000, have been sold by the Retail Seller in retail sales during the first five months of the year 1935 expiring on May 31.

Fourth. In the conduct of said retail sales Retail Seller sells, and has continuously sold, automobiles either for cash

at what is known as a "cash sale price", which in no case, as to any one vehicle, exceeds $1,500, or on the instalment plan for what is known as a "time price", which is larger than the "cash sale price". Each instalment sale made by it is evidenced by a contract of conditional sale at an agreed time price payable in instalments and reserves the title to the automobile so sold in the Retail Seller, or its assigns, until full payment of the time price by the retail buyer.

[fol. 4] Fifth. A substantial majority of Retail Seller's retail sales have in the past comprised such instalment or time sales, and during the year 1934 aggregated approximately sixty-one per cent of its total retail sales and sixty-five per cent during the first five months of the current year 1935.

Sixth. Under arrangements with General Motors Acceptance Corporation of Indiana, Inc., an Indiana corporation (hereinafter designated "G. M. A. C."), which is engaged in the business of purchasing retail instalment sales contracts covering products manufactured by General Motors Corporation or its divisions, Retail Seller has since its organization sold, and desires to continue to sell, to G. M. A. C., and the latter has purchased and desires to continue to purchase from Retail Seller instalment sale contracts at such prices and on such terms and conditions as may from time to time be agreed upon by G. M. A. C. and Retail Seller. The business relationship existing between Retail Seller and G. M. A. C. is mutually of great business advantage and value.

Seventh. By approval of the Governor of the State of Indiana on March 11, 1935, Chapter 231 of the laws of 1935, theretofore enacted by the General Assembly of the State of Indiana, became a law. This law is entitled "An Act to license and regulate and to promote competition in the business of purchasing contracts arising out of retail instalment sales, to prescribe the form of such contracts, to empower the Department of Financial Institutions to classify retail instalment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail instalment sales", and becomes effective, by its terms, from and after the 1st day of July, 1935. A copy of said Act is attached hereto, marked "Exhibit A", and made a part hereof.

Eighth. Complainant is advised by its counsel and, therefore, avers that said Act is unconstitutional and void in that its enforcement would deprive complainant of its property without due process of law and deny to it the equal protection of the laws, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States by illegally delegating to the Department of Financial Institutions legislative powers in violation of Section 1 of Article 4 of the Constitution of the State of Indiana, and by arbitrarily, unreasonably, and unjustifiably regulating and controlling the business and affairs of the complainant and fixing the terms and price at which and the manner in which complainant may sell and conduct its sale of automobiles, at a time price payable in instalments and the manner, terms and price in and at which complainant may sell the instalment sale contracts arising from such sales.

[fol. 5] Ninth. The sections of the Act particularly complained of on the ground of their unconstitutionality as hereinfore in Paragraph Eighth alleged are the following:

(a) Sections 6, 26 and 10, and Sections 7 and 8 which provide as follows:

(1) Sections 6, 26 and 10 provide that the Department of Financial Institutions is directed, upon investigation and by general order, to classify retail instalment sales or contracts arising therefrom, to determine and fix the "fair maximum finance charge" that may be contracted for in any retail instalment contracts, from time to time to reclassify such sales and contracts and redetermine and refix the maximum "finance charge", and to determine and fix the "fair maximum charges" which may be contracted for in any retail instalment contract for failure on the part of the buyer to pay any instalment of the time balance when it is due; that every retail buyer under an instalment sale contract may at any time prepay the then unpaid time balance owed on any retail instalment contract and thereupon become entitled to a reduction of the balance due in an amount to be fixed by said Department; that Retail Seller shall not receive any benefit from or part of any amount collected or received from any retail buyer as a finance charge in excess of the maximum amount to be fixed by the Department of Financial Institutions, which amount is to be fixed without regard to any differentiation as to

whether the retail instalment contract is sold with recourse on Retail Seller or without recourse or under an agreement by which Retail Seller agrees to repurchase the goods if the buyer defaults and such goods are repossessed.

(2) Sections 7 and 8 provide that if Retail Seller contracts for or receives from any retail buyer any amount whatsoever, for examination, service, brokerage, commission, expense, fee or other thing of value in excess of or in addition to the amount of the finance charge, charges, fees and taxes permitted by the Act, the indebtedness evidenced by the instalment contract and the security interest created thereby shall be enforceable against the retail buyer only to the extent of the principal balance unpaid thereon; and that even such "fees" as may be lawful may not be included in the principal balance fixed in the retail instalment contract.

(b) Sections 9, 11, 12, 13 and 15, which provide that [fol. 6] Retail Seller may sell its retail instalment contracts only to persons licensed under the Act; that neither G. M. A. C. nor any other corporation nor individual may purchase such contracts from Retail Seller without having a license from the Department of Financial Institutions; that the Department of Financial Institutions is authorized to reject any application for a license if it finds that the applicant cannot "operate its busines economically and efficiently" and to revoke or suspend any license if it finds that the licensee has "wilfully avoided or attempted to avoid the operation or effect of this Act" by purchasing any retail instalment contract or contracts "at a less price than the unpaid balance thereon";

(c) Sections 25, 27 and 29, which provide that the Department of Financial Institutions is authorized, from time to time, to make, amend and rescind rules and regulations necessary to carry out and enforce the provisions of said Act; that the Retail Seller shall conduct and transact its business in the manner required thereunder; and that, upon conviction for violation of any of the provisions of the Act or of the rules or regulations promulgated by the Department, the penalty shall be a fine of not more than $1,000.00, or imprisonment for not more than one year, or both.

(d) Sections 1, 2 and 4 which provide that the operation of the Act shall be limited exclusively to those instalment

sales where the cash price, as defined in the Act, would be $1,500 or less and a security interest in the goods is retained; that the Act shall not apply to instalment sales where such cash price would be $1,500 or less, but where no security interest is retained; that the Act shall not apply to instalment sales where the price is payable at a future date in but one instalment, or to instalment sales of articles in bulk where such cash price would, in total, exceed $1,500, even though, if such articles were sold individually, the individual instalment sales would be subject to the provisions of the Act; that the use of forms of instalment sale contracts presently in use be discontinued, and that new contract forms drawn up in the manner and containing the specific items provided for in the Act be used after its effective date.

Eleventh. Complainant is advised and, therefore, avers that each of the defendants, in their respective capacities hereinbefore designated, claims he is vested with the power [fol. 7] and charged with the duty of enforcing said Act; that the Department of Financial Institutions is about to cause to be published orders respecting classes of retail instalment sales or contracts, maximum finance charges, maximum charges which may be contracted for in retail instalment contracts for failure on the part of retail buyers to pay any instalment of the time balance when it is due, the amount of the reduction to which retail buyers are to be entitled upon prepayment of the unpaid time balance and the maximum amount, collected or received as a finance charge from any retail buyer, which may be paid by licensees to and received by retail sellers; and that defendants now publicly declare that the said act is a valid law applicable to the business of Retail Seller and publicly threaten and declare that they will enforce the same in all of its provisions.

Twelfth. The net worth of Retail Seller's business as of May 31, 1935, amounted to $3,711.04, and the present net worth of said business is not less than that amount. Retail Seller has in its employ forty-two employees, fourteen of whom are either salesmen or otherwise participate in the course of their employment in complainant's retail sales of automobiles.

In the pursuit of its said business, it had on hand as of May 31, 1935, for retail sale, twenty-two (22) new cars and

twenty-nine (29) used cars of the combined approximate value of $16,000.00. On the basis of orders and prospects on hand and other criteria commonly employed and relied upon in said business for purposes of estimate or forecast of future sales, it expects to sell approximately three hundred thirty (330) cars during the months of June and July, 1935, and, in accordance with the estimate submitted by it to the Chevrolet Motor Company as part of their practice respecting the number of cars expected to be ordered for retail sale in Retail Seller's business, it expects to become committed for and to sell approximately 495 cars in the period of six months expiring at the close of the year 1935.

Thirteenth. Unless restrained by this Honorable Court, enforcement of the Act would work irreparable damage and injury upon complainant and upon its business, and particularly enforcement of the provisions hereinafter in this paragraph enumerated:

(1) the provisions of the Act granting to the Department of Financial Institutions the power to fix and refix prices by fixing and changing from time to time

(a) the maximum "finance charge" and, accordingly, the maximum time price at which Retail Seller may sell its automobiles (Sections 6 and 26);

[fol. 8] (b) the amount of the reduction in the unpaid time balance to which retail buyers are to be entitled upon prepayment of the unpaid balance of their instalment contracts, and, accordingly, the value of such contracts (Section 6);

(c) the maximum amount which may be received by Retail Seller from G. M. A. C. out of the "finance charge" received from retail buyers under instalment sale contracts (Section 10);

(d) the price which G. M. A. C. may pay Retail Seller for its instalment contracts (Section 15 (d))

The foregoing powers and the exercise thereof from time to time will work irreparable damage upon complainant and upon its business by rendering uncertain the present and future conduct of complainant's business and complainant's present and future earnings, by reason of the risk necessarily involved in making future commitments

for the purchase of automobiles, and the inability to obtain future commitments for resale of such automobiles and those on hand, and for the sale of the retail instalment contracts covering such automobiles to G. M. A. C. or any other person or corporation engaged in the same or a similar business.

(2) the provisions of the Act which restrict the future sale of instalment sale contracts to those parties only who have received a license from the Department of Financial Institutions (Sections 9, 11, 15);

(3) the provisions of the Act which require discontinuance of the use of the forms of instalment sale contracts presently in use, the preparation and use of new contract forms and the mailing of statements to retail buyers and any indorsers and guarantors of the retail buyers (Sections 2 and 4), and the provisions of the Act which arbitrarily discriminate against Retail Seller (Section 1), and subject Retail Seller to severe and excessive liabilities, both civil and criminal, for any failure to comply (Section 29).

Fourteenth. Unless the injunction herein prayed be granted, the defendant members of the Commission of Financial Institutions will cause to be published a schedule of maximum charges under Section 26 of said Act, and the result thereof and of their threat to enforce the same will be that complainant must either conform thereto, and forego the liberty of action guaranteed it by the Constitution of the United States, or else it will be unable to sell the instalment contracts which it may make not conforming to such schedule of charges and other provisions of said Act, and will be subjected to the uncertainty and risk [fol. 9] of doing business under threat of the imposition of the severe and unreasonable penalties which said Act provides, and to a multiplicity of prosecutions for separate alleged violations thereof, all to its irreparable injury and damage. Complainant is without adequate remedy at law in the premises and it is only in a suit of this nature and by the injunctive process of this Court that such irreparable damage and injury can be avoided and complainant fully protected in the enjoyment of its property and rights as aforesaid.

Wherefore, your complainant prays that a temporary restraining order issue temporarily restraining and enjoin-

ing the defendants and each of them from enforcing against complainant the provisions of said act and the penalties therein prescribed for its violation until hearing and determination of the application for temporary injunction herein prayed, that the Judge of this Court enter an order immediately calling to his assistance to hear and determine this application two other Judges, according to the provisions of the statutes of the United States; that an order be issued directing the defendants hereinabove designated, and each of them, to show cause before this Honorable Court, as thereby constituted, at a time and place to be fixed by this Court, why a writ of preliminary injunction should not issue herein prior to July 1, 1935, the effective date of the Act, temporarily restraining and prohibiting the said defendants, and each of them, and their respective agents and employees, from enforcing or threatening to enforce the provisions of the said Act and the penalties for violations of its provisions and that at the hearing of this application said writs issue.

And complainant further prays that the process of this Court, as a court of equity, do issue against said defendants and each of them, requiring them and each of them fully and completely to answer this bill of complaint but not under oath, their answer under oath being waived; and that after due hearings on the merits, there be judgment perpetuating the said writ of injunction and perpetually enjoining and restraining the said defendants and each of them, and their respective agents and employees, from in any manner enforcing or threatening to enforce against complainant the provisions of said Act, and finally and definitely declaring said Act to be unconstitutional, null, and void, and complainant further prays for all orders and decrees necessary or proper in the premises; and for such other and further relief as to the court may seem just and proper.

McHenry Chevrolet Co., Inc., by M. D. Watkins, President, Complainant; Smith, Remster Hornbrook & Smith, Solicitors for Complainant. P. Y. Davis, of Counsel.

Duly sworn to by M. D. Watkins. Jurat omitted in printing.

[fol. 10] EXHIBIT "A" TO BILL OF COMPLAINT

Engrossed House Bill No. 377

A Bill for an Act to license and regulate and to promote competition in the business of purchasing contracts arising out of retail installment sales, to prescribe the form of such contracts, to empower the Department of Financial Institutions to classify retail installment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail installment sales.

Section 1. Definition of Terms.—Be it enacted by the General Assembly of the State of Indiana, That in this act, unless the context or subject matter otherwise requires:

The term "retail installment sale", or the plural thereof, means and includes every retail contract to sell specific goods and every retail sale of specific goods to any person:

(a) in which the cash price of the goods is not in excess of $1500., and may be paid in installments over a period of time and,

(b) in which the seller has taken or retained a security interest in the goods.

The term "person" includes a corporation or partnership or two or more persons having a joint or common interest.

The term "goods" includes all chattels personal other than money, things in action, emblements, industrial growing crops, things so affixed to the land as to become a part thereof, or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The term "specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

The term "retail" means to dispose of specific goods to, or to acquire specific goods by, a person who may consume such goods for his personal use.

The term "buyer" means a person who buys or agrees to buy goods, or any legal successor in interest of such person.

The term "retail buyer" means a buyer who is a party to a retail installment sale, or any legal successor in interest

of such person, and includes any person who as surety, indorser or guarantor or otherwise is liable on the obligation created by any retail buyer on any retail installment contract.

The term "seller" means a person who sells or agrees to sell goods.

The term "retail seller" means a seller who is a party to a retail installment sale.

The term "cash price" means the price, measured in dollars, agreed upon in good faith by the parties for the specific goods which are the subject matter of any retail installment sale.

The term "retail installment contract" means any written instrument, lawful under this act, which is executed in connection with any retail installment sale and is required by section 2 hereof or is authorized by section 3 hereof, and the term may include all such instruments executed in connection with any retail installment sale.

The terms "contract to sell", "sale" and "conditional sale" shall have the same meaning in this act as they are respectively defined in the Uniform Sales Act and Uniform Conditional Sales Act.

The term "conditional sale contract" means any written instrument evidencing a conditional sale.

The term "bank or trust company" means any national banking association formed under the laws of the United States with its principal office located in this state and doing business herein and any bank or trust company, any bank of discount and deposit, loan and trust and safe deposit company, or trust company organized and doing business under the provisions of any law of this state.

[fol. 11] The term "department" means "The Department of Financial Institutions".

The term "manufacturer" means a person who is engaged, directly or indirectly, in the manufacture or distribution of specific goods which may become the subject matter of a retail installment sale in this state.

The term "finance charge" means any consideration which the retail buyer contracts to pay the retail seller for the privilege of paying the principal balance in installments over a period of time.

The term "security interest" means a property interest in goods which are the subject matter of a retail installment sale, limited in extent to securing performance of some obli-

gation of the retail buyer or of some third person to the retail seller and includes the interest of a mortgagee of the goods and title to the goods whether or not expressed to be absolute, whenever such title is, in substance, retained for security only.

Section 2. Written Instrument.—Every retail installment sale shall be evidenced by an instrument in writing signed by the retail buyer, and a copy thereof shall be delivered to him by the retail seller at the time of its execution. An acknowledgment of the delivery thereof contained in the body of the instrument shall be conclusive proof of delivery in any action to enforce any obligation arising out of the retail installment sale. The written instrument shall contain all of the agreements of the parties made with reference to the specific goods which are the subject matter of the retail installment sale, and shall set forth specifically all items and matters required by this act. The reference to insurance shall recite generally the type or types of insurance the retail seller has agreed to procure for the retail buyer but such reference to insurance shall not be construed to imply the scope of the coverage, the terms, exceptions, limitations, restrictions or conditions of the contract or contracts of insurance to be furnished. Nothing in this act shall be construed to require the retail seller to comply with the provisions hereof at any time prior to the delivery of the specific goods to the retail buyer.

Section 3. Retail Installment Contracts.—Any retail seller may require any retail buyer to execute and deliver a promissory note to evidence the indebtedness created by any retail installment sale, and, to secure the payment of the indebtedness created by the sale or evidenced by the promissory note or to secure the performance of any other condition of the sale, may require the retail buyer to execute and deliver a conditional sale contract, chattel mortgage or other instrument to give the retail seller a security interest in the specific goods which were the subject matter of the retail installment sale. The written instrument required by section 2 hereof may evidence a conditional sale.

Section 4. Provisions of Written Instruments.—Every written instrument evidencing a retail installment sale shall recite the following separate items as such and in the following order:

(1) The cash price of the specific goods.

(2) The amount in cash of the retail buyer's down payment, whether made in money or goods or partly in money or partly in goods.

The term "down payment" for the purpose of this section, shall mean that part payment of the cash price required by the retail seller as a condition to the delivery of the specific goods sold or to be sold or to the extension of credit to the retail buyer for any portion of the cash price.

(3) The unpaid balance of the cash price payable by the retail buyer to the retail seller which is the difference between items (1) and (2).

(4) The cost to the retail buyer of any insurance the retail buyer has agreed to procure, if the retail seller has agreed to purchase the insurance and extend credit to the retail buyer for the price thereof.

(5) The principal balance owed on the retail installment contract which is the sum total of items (3) and (4).

(6) The amount of the finance charge.

(7) The time balance owed by the retail buyer to the retail seller and the number of installment payments required and the amount and date of each payment necessary finally to pay the time balance which is the sum total of items (5) and (6).

[fol. 12] Item (4) and item (6) may be added together and stated as one sum in the written instrument and if so stated item (5) may be omitted, but in such event the retail seller shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract a statement reciting the separate amounts of items (4) and (6).

Section 5. The Insurance.—Any retail seller who, in any retail installment contract, has agreed to purchase insurance for the retail buyer and to extend credit for the price thereof, shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract, a policy or policies of insurance or in lieu thereof a certificate

briefly describing the protection afforded by the insurance procured, and the kind and amount thereof. If the premium for insurance of like kind and amount, as fixed in the published manual of a recognized standard rating bureau designated by the retail seller, is less than the amount charged the retail buyer as fixed in the written instrument in compliance with item (4) of section 4 hereof, the retail buyer may deduct an amount equal to the difference from the amount of the last payment owed the retail seller. If, before the sale, assignment or transfer of the retail installment contract, the retail seller has not purchased the insurance for the retail buyer which the former, under the terms of the retail installment contract, is required to purchase, any licensee hereunder who becomes the owner, assignee or transferee of the retail installment contract shall, within twenty-five days after the execution of the assignment, purchase the insurance and mail the policies or certificates, instead of the retail seller as required above, and may, subject to the provisions of this section, collect and receive the amount of the cost thereof which was included as a part of the principal balance on the retail installment contract.

Section 6. The Finance Charge and Prepayment.—Subject to the provisions of this act, any retail seller at the time of making any retail installment sale may contract for the payment of a finance charge by the retail buyer and collect and receive the same. The finance charge contracted for in any retail installment contract may not exceed the maximum finance charge then authorized by the department as in this act provided. Every retail buyer shall have the right, at any time, to pay the then unpaid time balance owed on any retail installment contract, whether then due or not, and upon payment therefor, any holder of the retail installment contract shall reduce the amount of the then unpaid time balance by the amount fixed and determined in accordance with the regulations of the department in force as of the date of the making of the particular retail installment contract and applicable to such cases. The reduction herein authorized may be known as a discount and every retail buyer, upon full prepayment of any unpaid time balance owed by him on any retail installment contract, shall receive the discount but only in the amount, at the times and upon the conditions provided herein. The department shall and is hereby authorized to fix and determine the

amount of any discount to be given for prepayment as in this section authorized but no such discount shall be for an amount in excess of the amount of the finance charge on any particular retail installment contract.

Every retail seller may, at the time of making any retail installment sale, contract for the payment by the retail buyer of lawful delinquent charges for failure to pay any installment of the time balance on the date specified in the retail installment contract, and any retail seller or any lawful holder of a retail installment contract in which delinquent charges are contracted for may collect and receive the charges lawfully contracted for.

Section 7. Limitation on Amount of Debt and Charges. —No retail installment contract authorized by section 3 of this act which is executed in connection with any retail installment sale shall evidence any indebtedness in excess of the time balance fixed, in the written instrument in compliance with item (7) of section 4 of this act, but it may evidence in addition, any agreements of the parties including agreements for the payment of delinquent charges, taxes and fees, including attorney's fees. No retail seller, directly or indirectly, shall contract for or receive from any retail buyer as consideration for the extension of credit to the retail buyer, for the amount of the principal balance, any further or other amount whatsoever for examination, service, brokerage, commission, expense, fee or other thing of value than the finance charge, charges and fees permitted by this act, taxes on account of any retail installment contract or on specific goods sold thereunder and any lawful fees actually paid out by the retail seller to any public officer for the filing or recording or releasing any instrument securing the payment of the obligation owed on any retail installment contract. The lawful fees may be collected when the retail installment contract is made or at any time thereafter, but may not be included in the principal balance fixed in the written instrument in compliance with Item (5) of section 4 hereof.

[fol. 13] Section 8. Limitation on Recovery and Enforcement of Lien.—No retail installment contract which evidences an indebtedness greater than allowed by section 7 hereof and no retail installment contract in connection with which any charge prohibited by this act has been contracted

for or received shall be enforceable against any retail buyer for any amount in excess of the principal balance thereof and no security interest created by any such retail installment contract in connection with which an indebtedness is evidenced which is greater than allowed by section 7 hereof or in connection with which any charge prohibited by this act has been contracted for or received shall be enforceable for an amount in excess of the principal balance against any retail buyer in default under the terms of the retail installment contract.

Section 9. Limitation on Assignment of Contracts.—Except as in this section otherwise provided, every retail installment contract shall be assignable and the interest therein transferable to any person or persons. No retail seller may sell, assign and transfer any retail installment contract to any person other than a licensee under this act. Any retail installment contract which is or has been owned by a licensee may be enforced and collected by the holder thereof according to its lawful terms.

Section 10. Purchase of Retail Installment Contracts.—Any licensee hereunder may purchase any retail installment contract on such terms and conditions not inconsistent with the provisions of this act, and at such price and upon such terms as to the payment of the price, as may be agreed upon between the licensee and the retail seller. The records of the licensee shall show the price actually paid for retail installment contracts separately assigned to such licensee but retail installment contracts may be assigned in group or in bulk to any licensee as may from time to time be authorized by the department by regulation without disclosing the purchase price of the individual retail installment contracts. The department is authorized to make regulations from time to time concerning the purchase by licensees of retail installment contracts in group or in bulk and any purchase of such retail installment contracts made within the terms of the regulations shall not be construed as an attempt to avoid the operation and effect of this act.

No licensee shall enter into any agreement with any retail seller regarding the purchase of any retail installment contract whereby the retail seller shall receive, directly or indirectly, any benefit from or part of any amount collected or received from any retail buyer as a finance charge

or as the cost of the insurance to the retail buyer, in excess of an amount fixed and determined by the department and no licensee shall directly or indirectly pay any part of the amount collected as a finance charge or retail buyer's cost of insurance to any retail seller on any retail installment contract purchased from him in excess of the amount so fixed; and the department shall fix such maximum amount which may be so paid but without regard to any differentiation as to whether the retail installment contract is sold to the licensee with recourse on the seller in the event of the default of the buyer or without such recourse or under an agreement by which the seller agrees to repurchase the specific goods described in the retail installment contract if such buyer in such contract defaults and such goods are repossessed.

The provisions of this section shall not apply to any bona fide loan made to any retail seller which the retail seller is under an unqualified duty to repay as such, and which he has secured as to payment, by the sale, assignment, or transfer of retail installment contracts to the lender.

Section 11. Licensees.—No person shall purchase retail installment contracts from a retail seller doing business in this state or engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or trust company make loans to a retail seller doing business in this state on the security of retail installment contracts or engage in the business of making loans to retail sellers in this state on the security of retail installment contracts unless the department has licensed such person to do such business and has issued to the person a written instrument evidencing the license as in this act provided. Any person who desires to purchase retail installment contracts from retail sellers doing business in this state or to engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or trust company, to make loans to retail sellers doing business in this state on the security of retail installment contracts or to engage in the business of making loans to retail sellers doing business in this state on the security of retail install-

ment contracts, shall file an application for a license on forms prescribed by the department and pay the fees required herein.

[fol. 14] Section 12. Application for License and Fees.—The application for license shall contain:

(a) the name and address of the principal office of the applicant,

(b) if applicant has one or more branches operating in this state, the place of business of each such branch at the date of the application,

(c) the trade name, if any, under which applicant's business is to be conducted and if applicant is a co-partnership, the name of every member thereof and if a corporation, of each officer and director thereof,

(d) the total authorized investment used or to be used in the business in this state and if a corporation, the amount of the capital stock thereof issued and outstanding,

(e) a statement of the total amount of business transacted by it in this state during the fiscal year next preceding the date of the application,

(f) such other information touching the business of the applicant as the department may require.

The department is hereby authorized to prescribe the forms of the application and require such additional information as to it may seem necessary properly to regulate the business of the licensee. The forms prescribed shall require the applicant to agree to give notice to all retail sellers in this state with which it does business, when requested so to do by the department, of any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance charges as provided in section 26 of this act and to keep in this state, subject to examination, adequate records pertaining to the business done in this state.

The application shall be verified by the proper person and every applicant, other than a bank or trust company or an industrial loan and investment company authorized to issue certificates of indebtedness or investment, shall pay the department the sum of one hundred dollars as an

annual license fee at the time of the filing of the application. Any bank or trust company or industrial loan and investment company authorized to issue certificates of indebtedness or investment which shall apply for a license under this act shall pay the department the sum of ten dollars as an annual license fee at the time of the filing of the application. If the period for which the license is to run is less than six months one-half of the annual fee shall be charged. On or before the 20th day of June in each year every licensee shall pay the department the annual license fee provided herein for such licensee for the year commencing on the next succeeding July 1 and shall file an application in the form prescribed by the department. All license fees collected by the department shall be paid into the state treasury and become a part of the financial institutions fund and subject to the provisions of law relating thereto.

Section 13. Approval or Rejection of Application.—Upon the filing of any application for license and the payment of the license fee required by this act, if the department shall find that the applicant can operate its business economically and efficiently, it shall thereupon issue and deliver a license to the applicant. In considering economic and efficient operation the department shall take into consideration the fact that this act is designed to promote competition between licensees for the benefit of the class of retail buyers within its scope. The license shall authorize the applicant to do the business otherwise prohibited by this act. The license shall remain in full force and effect until it is surrendered, revoked or suspended as in this act provided. If the department shall find that the applicant cannot operate its business economically and efficiently within the scope of this act, it shall not issue a license to the applicant but shall notify the applicant of the denial, and return to the applicant the fee theretofore paid. The department shall give every applicant a reasonable opportunity to be heard with respect to the application, and shall approve or deny, by written order, every application for license hereunder within thirty days from the hearing thereon.

Section 14. Form of License.—The instrument evidencing the license shall be in such form as may be prescribed

by the department, and in addition thereto shall contain the following:

[fol. 15] (a) the name of the person licensed,

(b) the name of all partners if applicant is a co-partnership,

(c) the principal office of the applicant.

The instrument evidencing the license, or a certified copy thereof provided by the department, shall be kept posted conspicuously in the principal office of applicant and in every branch maintained and operated by applicant in this state.

Section 15. Revocation of License.—The Department is hereby authorized to revoke or suspend any license issued under this act if, after hearing, it finds:

(a) that the licensee has refused to permit the department to make any examination authorized hereunder or has failed to pay the cost of any examination made by the department or the annual license fee required hereby or any penalty assessed by the department against the licensee, or

(b) that the licensee has wilfully failed to comply with any rule or regulation of the department lawfully made hereunder, or

(c) that the licensee has wilfully violated any provision of this act, or any rule or regulation of the department lawfully made hereunder, or

(d) that the licensee has wilfully avoided or attempted to avoid the operation or effect of this act by purchasing any retail installment contract or contracts at a less price than the unpaid balance thereon or by entering into any agreement, combination or understanding express or implied with any retail seller the effect of which agreement, combination or understanding may be to avoid or attempt to avoid the operation or effect of this act.

The department shall give any licensee whose license it proposes to revoke ten days' notice in writing of the contemplated action and of the general grounds therefor. Before the license is revoked or suspended, the licensee shall be given reasonable opportunity to be heard. Licenses

may be revoked or suspended only by written order. If the department finds that the grounds for revocation or suspension of the license are applicable only to one branch or some branches operated by the licensee, it may revoke or suspend the license as to that branch or those branches only, or it may revoke the right of the licensee to do business as a licensee in this state. No revocation or suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract theretofore made.

Section 16. Recourse to Court.—Any person feeling aggrieved with any decision of the department made as in this act provided may commence an action in the circuit or superior court of the county in which the business operated by such person is located against said department as defendant to vacate or set aside any such order or decision of the department upon the grounds that any such regulation, order or decision of the department is insufficient, unreasonable or unlawful, in which action a copy of the complaint shall be served with the summons. The answer of the department to the complaint shall be filed within ten days after service of summons. All such actions shall have precedence over civil cases not of the same nature pending in any such court and such circuit or superior court shall always be deemed open for the trial thereof and the same shall be tried and determined as other civil actions.

Any such proceeding, action or suit to set aside or vacate any decision or order of the department or to prevent in any way such order or decision from becoming effective shall be commenced and every right of recourse to the courts shall be exercised within thirty days after the entry or rendition of such order or decision and the right to commence any such action, proceeding or suit or to exercise the right of any recourse to the courts shall terminate absolutely at the end of such thirty days after such entry or rendition thereof. Either party to any such action in the circuit or superior court shall have a right of appeal to the supreme court of the State of Indiana as in other civil cases.

[fol. 16] Section 17. Surrender of License.—Any licensee hereunder may surrender any license theretofore issued to it by the department at any time after ten days' notice to

the department in writing stating that the licensee proposes to and does thereby surrender the license as of a certain effective date named. The surrender of a license by a licensee shall not affect the civil or criminal liability or liability for fees or penalties which the licensee may be under by virtue of any act done prior to the surrender of the license.

Section 18. Report of Licensees.—Every licensee hereunder shall annually on or before the 15th day of March file a report with the department giving such relevant information as the department may require concerning the business and operation of the licensee in this state during the preceding calendar year. The report shall be made under oath and in the form prescribed by the department.

Section 19. Examination of Licensees.—The department may at any time investigate the business done in this state by any licensee hereunder, and for that purpose examine the books, accounts, records and files used and maintained by such licensees and their agents, brokers or other representatives. The department may also investigate the business of any person who is not a licensee hereunder and who is doing any business or act, the doing of which is prohibited hereby to persons other than licensees or banks or trust companies. For the purpose of discovering violations of this act and procuring information necessary to fix a maximum finance charge applicable to retail installment contracts, the department in making investigations authorized by this section shall have access to all books, accounts, papers, records, files, safes and vaults of any persons being examined and may require such persons to attend and testify relative to any transactions or business which may come within the scope of this act. In case of the disobedience on the part of any person to comply with any lawful order of the department or any lawful subpœna, or upon the refusal of any witness to appear and testify to any matter regarding which he may be lawfully interrogated, upon petition of the department setting forth the facts, it shall be the duty of the circuit or superior court of the county of which such person is a resident, or the judge thereof in vacation, to compel obedience to the lawful requirements of the subpœna or order and to compel the production of necessary and required books, papers, rec-

ords, documents and other evidence, and upon the failure, refusal or neglect of any person to comply with the order of the court or the judge thereof, such person shall be punished as for contempt of court.

Section 20. Costs of Examination.—The department shall prescribe and fix a schedule of fees, which are hereby imposed and shall be charged and collected by the department, for the services rendered and the duties performed by the department, under and by virtue of the provisions of this act in the supervision, regulation and examination of licensees hereunder and the schedule of fees so prescribed and fixed shall be determined in accordance with the provisions of section 35 of the Indiana Financial Institutions Act. For the purposes of this section a licensee hereunder shall be termed a financial institution. The fees fixed and prescribed in the schedule may include the cost incurred by the department in fixing a finance charge under the provisions of this act. No licensee shall be required to pay any fee for examination unless the cost to the department of making such examination shall exceed the license fee paid in compliance with the provisions of this act. All costs assessed by the department at the time of the making of any examination and paid by the licensee shall be paid into the state treasury and become a part of the financial institutions fund and subject to the provisions of law relating thereto. If any licensee refuses to permit the department to make an examination it shall be subject to such penalty as the department may assess, not in excess of one hundred dollars for each day any such refusal shall continue. Any penalty assessed by the department may be collected in an action brought in the name of the State of Indiana on the relation of "The Department of Financial Institutions" in the circuit or superior court of the county in which the licensee has its principal place of business.

Section 21. Contracts to Prevent Competition.—No manufacturer shall sell or contract to sell specific goods which may become the subject matter of a retail installment sale in this state, whether patented or unpatented to any retail seller in this state on the condition or with an agreement or understanding, express or implied, that the retail seller shall sell, assign or transfer any retail install-

ment contracts arising from the retail installment sales of the goods, or any part thereof only to a designated licensee or class of licensees, when the effect of the condition, agreement or understanding may be to lessen or eliminate competition, or create, or tend to create, a monopoly in the licensee or class designated. Any such condition, agreement or understanding with any retail seller in this state is hereby declared to be against the public policy of this state and to be unlawful and void.

[fol. 17] Section 22. Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly, to any retail seller in this state by any manufacturer that the manufacturer will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell, specific goods which may become the subject matter of a retail installment sale in this state, whether patented or unpatented, to the retail seller, unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to any designated licensee or class of licensees, shall be prima facie evidence that the manufacturer has sold or intends to sell such specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

Section 23. Further Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly to any retail seller in this state by any licensee hereunder that is affiliated with or controlled by any manufacturer that the manufacturer will terminate his contract with or cease to sell specific goods which may become the subject matter of a retail installment sale to the retail seller unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to the licensee making the threat, shall be presumed to be made at the direction of and with the authority of the manufacturer and shall be prima facie evidence of the fact that the manufacturer has sold or intends to sell the specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

Section 24. Subsidy of Licensees.—No manufacturer shall pay or give or contract to pay or give any thing or service of value to any licensee in this state, and no licensee in this state shall accept or receive or contract or agree to

accept or receive, directly or indirectly, any payment, thing or service of value from any manufacturer, if the effect of the payment or giving of any such thing or service of value by the manufacturer, or the acceptance or receipt thereof by the licensee, may be to lessen or eliminate competition or tend to create or create a monopoly in the licensee that accepts or receives the payment, thing or service of value or contracts or agrees to accept or receive the same.

Section 25. Rules and Regulations.—The department shall have authority from time to time to make, amend and rescind rules and regulations necessary to carry out and enforce the provisions of this act, including rules and regulations governing the business done in this state by licensees, the content of reports required from licensees and the manner and extent of examinations made of the business of licensees. Among other things, the department shall have authority to prescribe forms in which required information shall be set forth, items or details to be shown in balance sheets and earning statements and methods to be followed in the preparation of accounts necessary to reflect factors in the business of the licensee to be reckoned with by the department when fixing a maximum finance charge on retail installment contracts. The rules and regulations of the department, other than those issued pursuant to the authority vested in the department by section 26 of this act, shall be published and be effective in the manner and at the time prescribed by the department. No provision of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the department, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Section 26. Classification of Retail Contract and Variable Finance Charges.—It shall be the duty of the department and the department shall have power, jurisdiction and authority to investigate retail installment contracts and ascertain the facts with reference to retail installment sales and upon the basis of the ascertained facts:

(a) to classify, by general order, retail installment sales or retail installment contracts arising therefrom, according to such system of differentiation as may reasonably dis-

tinguish the classes of retail installment sales or the contracts made in connection with such sales, and

(b) to determine and fix by a general order the fair maximum finance charge that may be contracted for in any retail installment contracts or that may be contracted for in retail installment contracts of any classes which may be established by the department, and

(c) to determine and fix by a general order the fair maximum charges that may be contracted for in any retail installment contract and which may be imposed upon the retail buyer for failure to pay any installment of the time balance when it is due.

[fol. 18] The department, in determining the classes of retail installment sales or contracts, shall take into consideration the specific goods sold thereunder, the use thereof, the length of time usually given to the retail buyer in which to pay the unpaid balance owing on any retail installment contracts made in connection with the sales and any other factors which may reasonably afford a basis for the application of different finance charges on retail installment contracts which have or are likely to have the same or substantially the same unpaid balances.

The department, in determining the fair maximum finance charge which may be contracted for in any retail installment contracts or in any retail installment contracts of any classes which may have been established by it, shall take into consideration the availability of credit facilities to individuals who do not have the security generally required by commercial banks and the finance charge which will be necessary in order to induce sufficient amounts of efficiently operated commercial capital to enter into the business of making and purchasing retail installment contracts. The department shall fix charges sufficient to provide adequate credit facilities for retail installment sales.

The department may, from time to time, upon the basis of changed conditions or facts, reclassify retail installment sales and retail installment contracts, and redetermine and refix any maximum finance charge previously fixed by it, but the new finance charge shall not affect pre-existing retail installment contracts lawfully made. Any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance

charges shall fix the effective date of the new or changed classification or finance charge but the effective date shall not be earlier than thirty days after the date when notice of such new or changed classification or finance charge is published. Notice to the public, to retail sellers and to licensees hereunder shall be given by publication of the new or changed classification or finance charge by one publication in a daily newspaper of general circulation printed and published in the English language in the city of Indianapolis. In addition, the department may require licensees hereunder to give notice of such new or changed classification or finance charge to all retail sellers with whom the licensees do business in this state.

Any finance charge fixed by the department under the provisions of this act shall be lawful notwithstanding any other law of this state.

Section 27. Duty of Retail Seller and Licensee.—Every person to which this act is applicable shall conduct and transact his business in the manner required hereby and every licensee hereunder shall establish and maintain methods for the conduct of his business and affairs coming within the scope of this act in accordance with the requirements hereof and of any rule or regulation of the department made in relation thereto and under the authority of this act.

Section 28. Waiver of Statutory Protection.—No agreement of any retail buyer before or at the time of the making of any retail installment contract shall constitute a valid waiver of any provisions of this act.

Section 29. Violation of Act.—Punishment.—Any person who wilfully violates any of the provisions of this act, or the rules and regulations promulgated by the department under the authority hereof or any person who wilfully in any report or account filed in pursuance of any provision of this act or rule or regulation of the department makes any untrue statement of a material fact or omits to state any material fact necessary to give the department the information lawfully required by it, shall upon conviction, be fined not more than one thousand dollars or imprisoned not more than one year or both.

Section 30. Interpretation.—This act shall be interpreted and construed in connection with and as supplemental to

the Uniform Sales Act, as amended, and the Uniform Conditional Sales Act and any terms used in this act which are defined in either of said acts shall have the meaning given thereto by the aforementioned acts unless the context hereof clearly requires another meaning. Nothing in this act shall be construed to repeal any part of either of the acts mentioned in this section or any existing law of this state relating to interest or consideration that may be charged upon the loan, use or forbearance of money or sale of credit, but this act shall be construed as supplemental thereto.

[fols. 19 & 20] Section 31. Existing Contracts.—None of the provisions of this act shall apply to any sale or to any contract to sell made prior to the taking effect of this act which if made after this act takes effect would be a retail installment sale or contract and this act shall not affect pending litigation.

Section 32. Captions.—No caption of any section of this act shall in any way affect interpretation of this act or any part thereof.

Section 33. Severability Clause.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 34. Short Title.—This act may be cited as the Retail Installment Sales Act.

Section 35. Time of Taking Effect.—This act shall take effect on the first day of July, 1935.

[fol. 21] IN UNITED STATES DISTRICT COURT

SUBPŒNA—Issued June 22, 1935

The President of the United States of America to Paul V. McNutt, Governor of the State of Indiana; Philip Lutz, Attorney General of Indiana; Richard A. McKinley, Director of the Department of Financial Institutions of the State of Indiana; Oscar P. Welborn, Harvey B. Hartsock, C. M. Setser, Myron Gray and Robert Batton, Members of the Commission of Financial Institutions of the State of Indiana; and Herbert M. Spencer, Prosecuting Attorney of the Nineteenth Judicial Circuit of The State of Indiana, Greeting:

You are hereby commanded that all excuses and delays set aside you be and appear within twenty days after the service of this subpœna at the Clerk's office of the United States District Court for the Southern District of Indiana, at Indianapolis, Indiana to answer unto the bill of complaint of McHenry Chevrolet Co., Inc., in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Robert C. Baltzell, United States District Judge at Indianapolis, this 22nd day of June, A. D. 1935.

Albert C. Sogemeier, Clerk, by Mary Lou Hostettler, Deputy Clerk. (Seal.)

Memorandum

The Defendants in this case are required to file their answer or other defense in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

[fol. 22] United States Marshal's Return

(Endorsed on back of Subpœna in Equity)

No. 1685 Equity

Received this writ at Indianapolis, Indiana, June 24, 1935, and executed the same, by reading the same to and within the hearing of, and by delivering a true copy of this

writ to each of the within named, Paul V. McNutt, Governor of the State of Indiana, Philip Lutz, Jr., Attorney General of Indiana; Richard A. McKinley, Director of the Department of Financial Institutions of State of Indiana; Oscar P. Welborn, Harvey B. Hartsock, members of the Commission of Financial Institutions of the State of Indiana; and Herbert M. Spencer, prosecuting attorney of the 19th Judicial Circuit of State of Indiana; all at Indianapolis, Indiana, June 24, 1935.

Alf O. Meloy, U. S. Marshal, by Harry E. Gates, Deputy.

Marshal's Costs:
6 Services, $12.00.

Received this writ at Indianapolis, Indiana, June 24, 1935, and executed the same, by reading the same to and within the hearing of, and by delivering a true copy of this writ to each of the within named C. M. Setser, at Columbus, Ind., June 24, 1935, and Myron Gray, at Muncie, Ind., June 25, 1935, being members of the Commission of Financial Institutions of the State of Indiana. The within named Robert Batton not found in my district.

Alf O. Meloy, U. S. Marshal, by Frank A. Holmes, Deputy.

Marshal's Costs:

2 Services	$4.00
Mileage	5.70
	$9.70

[fol. 23] And afterwards to wit: at the May Term of said Court on the 28th day of June, 1935, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now the defendant Herbert M. Spencer, Prosecuting Attorney, by Albert M. Thayer, his solicitor, and files appearance, which is as follows: (H. I.)

[fol. 24] In United States District Court

Assignment of Judge

Public business requiring, I hereby designate and assign the Honorable Thomas W. Slick, United States District

Judge for the Northern District of Indiana, to hold United States District Court in the Southern District of Indiana from July 1, 1935 to October 1, 1935, and for such further time as may be necessary to complete unfinished business.

Evan A. Evans, Senior United States Circuit Judge
in and for the Seventh Judicial Circuit.

Chicago, Illinois, June 11, 1935.

[fols. 25 & 26] IN UNITED STATES DISTRICT COURT

ENTRY OF CONTINUANCE—July 3, 1935

This matter coming on now to be heard upon the plaintiff's application for interlocutory injunction and the Court now continues this matter to July 8, 1935, 9:00 o'clock, A. M., daylight savings time.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

JOINT AND SEVERAL ANSWERS OF DEFENDANTS—Filed July 8, 1935

The defendants, Paul V. McNutt, Governor of the State of Indiana, Philip Lutz, Attorney General of Indiana, Richard A. McKinley, Director of the Department of Financial Institutions of the State of Indiana, Oscar P. Welborn, [fol. 28] Harvey B. Hartsock, C. M. Setzer, Myron Gray and Robert Batton, Members of the Commission for Financial Institutions of the State of Indiana, and Herbert M. Spencer, Prosecuting Attorney for the Nineteenth Judicial Circuit of the State of Indiana, for their joint and several answers to the bill of complaint filed herein by McHenry Chevrolet Co., Inc., allege and say:

I

Said defendants admit so much of subdivision First of the bill of complaint herein as alleges that the complainant, McHenrry Chevrolet Co., Inc., is a corporation duly organized and existing under the General Corporation Act

of the State of Indiana and that said complainant is a citizen and resident of the State of Indiana and has its principal place of business in the City of Indianapolis, County of Marion and State of Indiana.

Said defendants further admit so much of subdivision First of complainant's bill of complaint as alleges that the defendant, Paul V. McNutt, is the duly elected, qualified and acting Governor of the State of Indiana and is a resident of the City of Indianapolis in the Southern District of said State; that the defendant, Philip Lutz, is the duly elected, qualified and acting Attorney General of the State of Indiana and is a resident in the Southern District of said state; and that the defendant, Richard A. McKinley is the duly appointed Director of the Department of Financial Institutions of the State of Indiana and is a resident of the City of Jeffersonville in the Southern District of the State of Indiana.

Said defendants further admit so much of said subdivision First of the bill of complaint as alleges that Oscar P. [fol. 29] Welborn, Harvey B. Hartsock, C. M. Setser, Myron Gray and Robert Batton are the duly appointed members of the Commission for Financial Institutions of the State of Indiana. That the said Welborn and Hartsock reside at Indianapolis in the Southern District of the said state; that the said Setser resides at Columbus in the Southern District of said state; and that the said Gray and Batton reside respectively at Muncie and Marion in the Northern District of said state.

Said defendants further admit so much of said subdivision First of the bill of complaint as alleges that defendant Herbert M. Spencer is the duly elected, qualified and acting Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana wherein complainant's principal place of business is situated and that said Spencer resides at Indianapolis in the Southern District of Indiana.

II

Said defendants admit so much of subdivision Second of the bill of complaint herein as alleges that the action is a suit of a civil nature but denies that said action arises under the Constitution and laws of the United States and that the matter in controversy exceeds the sum of three thousand dollars ($3,000) in value exclusive of interest and costs.

III

Said defendants admit so much of subdivision Third of the bill of complaint herein as alleges that complainant is and since its organization in December 1933, has been engaged as a dealer in the business of selling automobiles at retail to buyers thereof in the State of Indiana and that its [fol. 30] business as such includes the sale of new Chevrolet automobiles under and by virtue of an agreement with the manufacturer thereof, Chevrolet Motors Company, appointing it a dealer for the sale of new Chevrolet cars in a certain specified territory in the State of Indiana, and that its said business includes also the sale of used cars acquired by it in the course of its business. Said defendants further answering said subdivision Third of the bill of complaint herein say that they do not know the number of automobiles sold by said complainant during the first five months of the year 1935 nor do they know the price for which the same were sold and that therefore they neither admit nor deny the allegations as to said number and price.

IV

Said defendants admit so much of said subdivision Fourth of the bill of complaint herein as alleges that said complainant sells and has continuously sold automobiles either for cash at what is known as a cash sale price which in no case as to any one vehicle exceeds fifteen hundred dollars ($1500) or on the installment plan for what is known as a time price which is larger than the cash sale price and that each installment sale made by it is evidenced by a contract of conditional sale at an agreed time price payable in installments, the title to the automobile being reserved in the complainant or its assigns until full payment of the time price by the retail buyer; but said defendants allege that the term time price is a term used by complainant in its contracts to express the sum total of the cash selling price and the charge made to the retail buyer for the extension of credit sometimes called the finance charge and in which is included [fol. 31] certain insurance charges and dealers' reserves which are not stated separately in said contract but are combined in one item in an amount called by the complainant the time price.

V

The defendants say that they do not know as to the percentage of the complainant's sales which are made upon the installment method and therefore they neither admit nor deny the allegations of the Fifth subdivision of the bill of complaint herein.

VI

The defendants admit so much of subdivision Sixth of the bill of complaint herein as alleges that complainant under arrangement with General Motors Acceptance Corporation of Indiana, Incorporated, which is engaged in the business of purchasing retail installment sales contracts covering products manufactured by General Motors Corporation or its divisions the complainant has since its organization sold and desires to continue to sell to said corporation and the latter has purchased and desired to continue to purchase from the complainant installment sales contracts at such price and on such terms and conditions as from time to time are agreed upon by them and that the relation existing between them is mutually of great business advantage and value.

Further answering said subdivision Sixth said defendants allege that the arrangements therein referred to is a method employed by the complainant and said corporation for the extension of credit to buyers of products referred to in the complaint whereby among other things a charge is made to be paid by the buyer of said products for the credit extended and for the loan or the forebearance of money, [fol. 32] goods, wares and merchandise and that under said arrangements said corporation furnishes to complainant rate charts, forms of contracts and materials designed to facilitate the extension of credit to the retail buyer and that complainant has no part in the determination of the costs of such credit extension.

VII

Said defendants admit so much of subdivision Seventh of the bill of complaint herein as alleges that by act approved by the Governor of the State of Indiana on March 11, 1935, Chapter 231 of the Acts of the General Assembly of Indiana of 1935 became a law and that this law is entitled "An Act to license and regulate and to promote com-

petition in the business of purchasing contracts arising out of retail installment sales, to prescribe the form of such contracts, to empower the department of financial institutions to classify retail installment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail installment sales," and that said act became effective from and after the 1st day of July 1935 and that the copy of said act attached to the bill of complaint herein is a correct copy thereof.

VIII

The defendants deny so much of subdivision Eighth of the bill of complaint herein as alleges that said Chapter 231 of the Acts of the General Assembly of 1935 is unconstitutional and void in that its enforcement would deprive complainant of its property without due process of law and deny to it equal protection of the laws in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States by illegally delegating to the [fol. 33] Department for Financial Institutions legislative powers in violation of Section 1 of Article III of the Constitution of the State of Indiana and by arbitrarily, unreasonably and unjustifiably regulating and controlling the business and affairs of the complainant and fixing the term and price at which and the manner in which retail sellers may sell and conduct their sale of automobiles and other General Motors' products at time price payable in installments and the manner, terms and price in and at which retail sellers may sell and complainant may purchase the installment sale contracts arising from such sales.

Said defendants further answering said subdivision Eighth of the bill of complaint herein allege that said act is not unconstitutional and void and that its enforcement will not deprive complainant of its property without due process of law nor deny to it the equal protection of the laws as alleged in said bill of complaint but said defendants further allege that said business is affected with such a public interest as to justify regulation in the interest of the public welfare and that the provisions of said act are not arbitrary, unreasonable and unjustifiable.

IX

The said defendants in answer to subdivision Ninth of the complaint herein allege and say that said subdivision pur-

ports to state the sections by number upon which the complainant relies and purports to state an interpretation of said sections; that said interpretations are not full and complete and to that extent are misleading and insufficient but defendants allege that under a proper construction of said act said sections do not deny to the complainant the equal protection of the laws nor do they deprive the complainant of due process of law. That said act is for the purpose of the [fol. 34] regulation under the police power of the state of the business of retail installment selling particularly with reference to the finance charge for such services and that the methods set out in said sections and the classifications referred to in said sections are reasonably adapted to the exercise of such police power and are not arbitrary, unreasonable or unjustifiable.

XI

Answering complainant's subdivision Eleventh the defendants admit the allegations thereof and allege further that since the filing of this complaint the department has promulgated the said regulations hereto attached and hereof made a part marked exhibit A and said defendants admit that they will in so far as required by said act in their respective capacities enforce the same in all of its provisions unless restrained by the Court.

XII

Defendants answering subdivision Twelfth of the complainant's bill of complaint say that they are not advised as to the matters therein contained and alleged and therefore said defendants neither admit nor deny the allegations of said subdivision Twelfth aforesaid.

XIII

Answering subdivision Thirteenth of the bill of complaint herein the defendants deny so much of said subdivision Thirteenth as alleges that the enforcement of the act and especially the provisions therein set out will result in irreparable damage and injury to the complainant and its [fol. 35] business and deny so much of said subdivision as alleges that the enforcement of said act will work continued irreparable damage upon the business of complainant by creating uncertainty which will impair the efficiency of its

operations and its earnings and by making hazardous future commitments for the purchase of automobiles and the inability to obtain future commitments for resale of automobiles and those on hand and for the sale of retail installment contracts covering such automobiles to General Motors Acceptance Corporation of Indiana, Incorporated or any other person or corporation engaged in the same or similar business.

XIV

The defendants deny so much of said subdivision Fourteenth of the bill of complaint herein as alleges that complainant is without adequate remedy at law in the premises and that it is only by the injunctive process of this court that such irreparable damage and injury can be avoided and complainant further protected in the enjoyment of its property and rights and said defendants allege that the enforcement of said act will not produce irreparable damage and injury.

Said defendants further answering said subdivision Fourteenth of the bill of complaint admit so much of said subdivision as alleges that unless the injunction prayed for be granted the defendants, members of the Commission of Financial Institutions will cause to be published a schedule of maximum charges under Section 26 of said act and allege that said schedule has already been published as herein averred but said defendants also admit that said complainant will be required to conform thereto unless said defendants are restrained from the enforcement of said act but [fol. 36] the defendants say that said act and schedule and its enforcement will not deny to the complainant any liberty of action guaranteed to it by the Constitution of the United States.

XV

Said defendants answering further the bill of complaint in said cause say:

1. That the court is without jurisdiction, less than three thousand dollars being involved in the controversy herein and no federal question being sufficiently stated therein.

2. That the Act of the General Assembly of Indiana complained of is constitutional and valid and that complainant

is not deprived of due process of law or the equal protection of the laws by said act.

Wherefore said defendants pray that said bill of complaint be dismissed and that the relief therein prayed for be denied.

Philip Lutz, Jr., Attorney General; Fred A. Winking, Chief Assistant Attorney General; Joseph W. Hutchison, Assistant Attorney General, Attorneys for Defendants. Leo M. Gardner, of Counsel.

[fol. 37] EXHIBIT "A" TO ANSWERS

State of Indiana

The Department of Financial Institutions

Retail Installment Sales Act

General Order No. 1

Pursuant to the power and authority vested in it under Chapter 231 of the Acts of the General Assembly of the State of Indiana for the Year of 1935, which Chapter was approved on March 11, 1935, and became effective in its entirety on July 1, 1935, and is now in full force and effect.

The Department of Financial Institutions of the State of Indiana does hereby classify "Retail Installment Sales" and "Retail Installment Contracts" arising therefrom, and fix and determine the maximum finance charge that may be contracted for in each class, as follows:

Class I. Sales of New Merchandise, Excepting Commercial Motor Vehicles and Trucks, Under Retail Installment Contracts Having a Principal Balance of $100.00 or less

It is hereby found and ordered that retail installment sales of New Merchandise, excepting commercial motor vehicles and trucks, under retail installment contracts, having a principal balance of $100.00 or less, are a separate and distinct class of retail installment sales and retail installment contracts which, for the purpose of identification, are hereby designated as Class I; and it is hereby fixed and determined that the maximum finance charge that may be

contracted for in any retail installment sale or contract of said Class I is two per cent. (2%) of the principal balance of said contract, plus an amount equal to simple interest at the rate of two and one-half per cent. (2½%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is contracted to be paid, and the remainder of each payment is applied first to the payment of said two per cent (2%) of the principal balance above mentioned and then in reduction of the principal balance; provided, however, that the maximum finance charge in any sale or contract of this Class shall not be less than ten per cent. (10%) of the principal balance of such contract for each year and/or fraction of year that any part of the principal balance is contracted to remain unpaid.

[fol. 38] Class II. Sales of New Commercial Motor Vehicles and Trucks under Retail Installment Contracts Having a Principal Balance of $100.00 or Less

It is hereby found and ordered that retail installment sales of new commercial motor vehicles and trucks under retail installment contracts, having a principal balance of $100.00 or less, are a separate and distinct class of retail installment sales and retail installment contracts which, for the purpose of identification, are hereby designated as Class II; and it is hereby fixed and determined that the maximum finance charge that may be contracted for in any retail installment sale or contract of said Class II is one per cent (1%) of the cash price of the specific goods as recited in such contract, plus two per cent (2%) of the principal balance as set forth in said contract, plus an amount equal to simple interest at the rate of two and one-half per cent (2½%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is contracted to be paid, and the remainder of each payment is applied first to the payment of said one per cent (1%) of the cash price of the specific goods and said two per cent of the principal balance of said contract and then in the reduction of the principal balance; provided, however, that the maximum

finance charge in any sale or contract of this Class shall not be less than ten per cent (10%) of the principal balance of such contract for each year and/or fraction of year that any part of the principal balance is contracted to remain unpaid, plus one per cent (1%) of the cash price of the specific goods as recited in such contract.

Class III. Sales of New Merchandise, Excepting Commercial Motor Vehicles and Trucks under Retail Installment Contracts Having a Principal Balance of Over $100.00

It is hereby found and ordered that retail installment contracts of new merchandise, excepting commercial motor vehicles and trucks, under retail installment contracts having a principal balance of over $100.00 are a separate and distinct class of retail installment sales and retail installment contracts which, for the purpose of identification, are hereby designated as Class III; and it is hereby fixed and determined that the maximum finance charge that may be contracted for in any retail installment sale or contract of said Class III is two per cent (2%) of the principal balance of said contract, plus an amount equal to simple interest at the rate of two per cent (2%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is con-[fol. 39] tracted to be paid, and the remainder of each payment is applied first to the payment of said two per cent (2%) of the principal balance and then in reduction of the principal balance.

Class IV. Sales of New Commercial Motor Vehicles and Trucks under Retail Installment Contracts Having a Principal Balance of Over $100.00

It is hereby found and ordered that retail installment sales of new commercial motor vehicles and trucks under retail installment contracts having a principal balance of over $100.00 are a separate and distinct class of retail installment sales and retail installment contracts which, for the purpose of identification, are hereby designated as Class IV; and it is hereby fixed and determined that the maximum finance charge that may be contracted for in any retail installment sale or contract of said Class IV is one

per cent (1%) of the cash price of the specific goods as recited in such contract, plus two per cent (2%) of the principal balance of said contract, plus an amount equal to simple interest at the rate of two per cent (2%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is contracted to be paid, and the remainder of each payment is applied first to the payment of said one per cent (1%) of the cash price of the specific goods and said two per cent (2%) of the principal balance of said contract and then in reduction of the principal balance.

Class V. Sales of Used Merchandise, Excepting Commercial Motor Vehicles and Trucks, under Retail Installment Contracts Having a Principal Balance of $300.00 or Less

It is hereby found and ordered that retail installment sales of used merchandise, excepting commercial motor vehicles and trucks, under retail installment contracts, having a principal balance of $300.00 or less, are a separate and distinct class of retail installment sales and retail installment contracts, which for the purpose of identification, are hereby designated as Class V; and it is hereby fixed and determined that the maximum finance charge that may be contracted for in any retail installment sale or contract of said Class V is five per cent (5%) of the principal balance of said contract, plus an amount equal to simple interest at the rate of three per cent (3%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is contracted to be paid, and the remainder of each payment is applied first to the payment of said five per cent (5%) of the principal balance and then in reduction of the principal balance; provided, however, that the maximum finance charge in [fol. 40] any sale or contract of this Class shall not be less than—

$10.00 if the principal balance is $50.00 or less;
13.00 if the principal balance is more than $50.00 and does not exceed $70.00;

16.50 if the principal balance is more than $70.00 and does not exceed $90.00;
20.00 if the principal balance exceeds $90.00;

plus, in each instance, five per cent. (5%) of the principal balance first above mentioned.

Class VI. Sales of Used Commercial Motor Vehicles and Trucks Under Retail Installment Contracts Having a Principal Balance of $300.00 or Less

It is hereby found and ordered that retail installment sales of used commercial motor vehicles and trucks under retail installment contracts having a principal balance of $300.00 or less are a separate and distinct class of retail installment sales and retail installment contracts which, for the purpose of identification, are hereby designated as Class VI; and it is hereby fixed and determined that the maximum finance charge that may be contracted for in any retail installment sale or contract of said Class VI is one per cent. (1%) of the cash price of the specific goods as recited in such contract, plus five per cent. (5%) of the principal balance as set forth in said contract, plus an amount equal to simple interest at the rate of three per cent (3%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is contracted to be paid, and the remainder of each payment is applied first to the payment of said one per cent (1%) of the cash price of the specific goods and said five per cent (5%) of the principal balance of said contract and then in the reduction of the principal balance; provided, however, that the maximum finance charge in any sale or contract of this Class shall not be less than—

$10.00 if the principal balance is $50.00 or less;
13.00 if the principal balance is more than $50.00 and does not exceed $70.00;

[fol. 41]

16.50 if the principal balance is more than $70.00 and does not exceed $90.00;
20.00 if the principal balance exceeds $90.00;

plus, in each instance, one per cent. (1%) of the cash price of the specific goods as recited in such contract, and five per cent (5%) of the principal balance as set forth in said contract.

Class VII. Sales of Used Merchandise, Excepting Commercial Motor Vehicles and Trucks, Under Retail Installment Contracts Having a Principal Balance of Over $300.00

It is hereby found and ordered that retail installment contracts of used merchandise, excepting commercial motor vehicles and trucks, under retail installment contracts having a principal balance of over $300.00 are a separate and distinct class of retail installment sales and retail installment contracts which, for the purpose of identification, are hereby designated as Class VII; and it is hereby fixed and determined that the maximum finance charge that may be contracted for in any retail installment sale or contract of said Class VII is five per cent. (5%) of the principal balance of said contract, plus an amount equal to simple interest at the rate of two and one-half per cent. (2½%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is contracted to be paid, and the remainder of each payment is applied first to the payment of said five per cent (5%) of said principal balance of said contract and then in reduction of said principal balance; provided, however, that the maximum finance charge in any sale or contract of this Class shall not be less than $20.00.

Class VIII. Sales of Used Commercial Motor Vehicles and Trucks Under Retail Installment Contracts Having a Principal Balance of Over $300.00

It is hereby found and ordered that retail installment sales of used commercial motor vehicles and trucks under retail installment contracts having a principal balance of over $300.00 are a separate and distinct class of retail installment sales and retail installment contracts which, for the purpose of identification, are hereby designated as Class

VIII; and it is hereby fixed and determined that the maximum finance charge that may be contracted for in any retail installment sale or contract of said Class VIII is one [fol. 42] per cent (1%) of the cash price of the specific goods as recited in such contract, plus five per cent. (5%) of the principal balance as set forth in said contract, plus an amount equal to simple interest at the rate of two and one-half per cent. (2½%) per month, computed on the declining principal balances as if the buyer paid the time balance in the installments and at the times contracted, and as if so much of each payment is applied to the payment of such interest as will pay the same to the date such payment is contracted to be paid, and the remainder of each payment is applied first to the payment of said one per cent (1%) of the cash price of the specific goods and said five per cent (5%) of the principal balance of said contract and then in reduction of the principal balance; provided, however, that the maximum finance charge in any sale or contract of this Class shall not be less than $20.00.

Dealer's Participation in Finance Charge

It is hereby ordered, fixed and determined that no licensee under said Chapter 231 of The Acts of the General Assembly of the State of Indiana for 1935, shall enter into any agreement with any retail seller regarding the purchase of any retail installment contract whereby the retail seller shall receive, directly or indirectly, any benefit from or part of any amount collected or received from any retail buyer, as a finance charge or as the cost of the insurance to the retail buyer, in excess of two per cent. (2%) of the principal balance as used in Item (5) under Section 4 of said Act, in the case of retail installment contracts of Classes I, II, III and IV, as established by this order, and five per cent. (5%) of the principal balance as used in Item (5) under Section 4 of said Act, in the case of retail installment contracts of Classes V, VI, VII and VIII, as established by this order, and no licensee shall, directly or indirectly, pay any part of the amount collected as a finance charge, or retail buyer's cost of insurance, to any retail seller on any retail installment contract purchased from him, in excess of said amounts herein fixed.

Maximum Delinquent Fees

It is hereby ordered, fixed and determined that no retail seller may contract, at the time of the making of any retail installment contract, for the payment by the retail buyer of delinquent charges for failure to pay any installment of the time balance on the date specified in the retail installment contract, or collect or receive any such delinquent charges in excess of—

$.15 on payment of a less amount than $15.00 and
.25 on payments of $15.00 and over which are delinquent more than 2 days but not more than 7 days;

[fol. 43]

$.25 on payments of a less amount than $15.00 and
.50 on payments of $15.00 and over which are delinquent more than 7 days but not more than 11 days;
$.40 on payments of less amount than $15.00 and
.75 on payments of $15.00 and over which are delinquent more than 11 days but not more than 24 days;
$.50 on payments of less amount than $15.00 and
1.00 on payments of $15.00 and over which are delinquent more than 24 days;

plus, in each instance, the actual expenses which the holder of the retail installment contract has in connection with making the collection of such installment in excess of the amount herein above set forth; and plus, also, a finance charge equal to simple interest at the rate of—

2½% per month on contracts of Classes I and II;
2% per month on contracts of Classes III and IV;
3% per month on contracts of Classes V and VI;
2½% per month on contracts of Classes VII and VIII

for the actual number of days each such installment remains delinquent or is extended by the agreement of the parties;

Provided, also, that the holder of the retail installment contract shall keep at all times with the record of such account a verified statement of the actual expenses charged to the retail buyer in connection with making any collec-

tion of a delinquent installment or installments as herein authorized.

Minimum Discount for Prepayment

It is hereby ordered, fixed and determined that each retail buyer who pays the full unpaid time balance of his retail installment contract at or before the time the installment thereof preceding the last installment is due, shall receive a discount from such time balance equal to interest at the rate of one per cent. (1%) per month on each installment so prepaid for the respective full install-
[fol. 44] ment period or periods that each such installment or installments are paid prior to being due by the terms of the contract; provided, however, that if the retail installment contract included a finance charge of less than one per cent. (1%) per month when calculated on declining principal balances, as that part of the maximum finance charges based on simple interest is provided to be computed in this order, then the discount shall not be less than interest computed at the rate of the finance charge as so calculated, computed in the manner in this paragraph provided.

This general order shall be in full force and effect on and after 12 o'clock midnight, August 2-3, 1935.

In witness whereof, The Department of Financial Institutions has caused this general order to be executed by its director and sealed with the seal of the department at Indianapolis in the State of Indiana this 2nd day of July, 1935.

The Department of Financial Institutions of the State of Indiana, by R. A. McKinley, Director.

Attest: H. B. Wells, Secretary, Commission for Financial Institutions.

[fol. 45] In United States District Court

Entry of Filing Brief, etc.—July 8, 1935

And motion of Amici Curiæ for leave to file brief, filed, and leave is granted and thereupon Amici Curiæ files brief.

And John R. Weber and Milan V. Ayres file affidavits, which are as follows: (H. I.)

Plaintiff files brief and defendants file brief, and defendants also file supporting affidavit of Herman B. Wells and Edward A. Edwards, which affidavits are as follows: (H. I.)

The hearing on the plaintiff's application for interlocutory injunction is extended to September 16, 1935 or until further order of this Court.

[fol. 46] Oct. 1, 1935

Comes now the plaintiff, by its solicitors, and files second affidavit of Milan V. Ayres, which is as follows: (H. I.)

[fol. 47] In United States District Court

Entry of Filing of Findings of Fact and Conclusions of Law—Oct. 2, 1935

This cause having come on to be heard and the parties having appeared by their respective counsel and offered evidence in support of their respective contentions and the court having heard the arguments of counsel and being now fully advised in the premises makes and files as a part of the record in said cause its findings of fact and states its conclusions of law thereon in the words and figures following:

[fol. 48] In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed Oct. 2, 1935

1

McHenry Chevrolet Company, Inc., complainant herein, is a corporation which was organized in 1933 under The Indiana General Corporation Act, and has been since said date and at all times mentioned herein, engaged in the business of selling automobiles at retail in the City of Indianapolis, State of Indiana. In its business said corporation sells new Chevrolet automobiles acquired from the Chevrolet Motor Company, a division of General Motors Corporation, in accordance with a franchise granted by the latter appointing said corporation a dealer for the sale of new

Chevrolet cars; and its business consists also of selling used [fol. 49] cars acquired by it in the course of its business.

General Motors Acceptance Corporation of Indiana, Inc., is a stock corporation which was organized in 1929 under the Indiana General Corporation Act to buy and deal in contract obligations and similar choses in action. Unless otherwise indicated herein, said corporation will be hereinafter referred to as G. M. A. C. The principal office and place of business of G. M. A. C. are in the City of Indianapolis, State of Indiana, and a branch is maintained in each of the cities of Ft. Wayne and South Bend, in the State of Indiana. G. M. A. C. succeeded, upon its organization, to the Indiana assets and business of General Motors Acceptance Corporation of New York which, since 1925, had been engaged in Indiana in the same business as is now conducted by G. M. A. C.

The defendant, Paul V. McNutt, is the duly elected, qualified and acting Governor of the State of Indiana, and is a resident of the City of Indianapolis, in the Southern District of Indiana.

The defendant, Philip Lutz, is the duly elected, qualified and acting Attorney-General of the State of Indiana, and is a resident of the City of Indianapolis in the Southern District thereof.

The defendant, Richard A. McKinley, is the duly appointed Director of The Department of Financial Institutions of the State of Indiana, and is a resident of the City of Jeffersonville in the Southern District thereof.

The defendants, Oscar P. Welborn, Harvey B. Hartsock, C. M. Setser, Myron Gray and Robert Batton, are the duly appointed members of the Commission for Financial Institutions of said state, the said Welborn and Hartsock [fol. 50] residing at Indianapolis, in the Southern District thereof, the said Setser residing at Columbus in the Southern District thereof, the said Gray and Batton residing respectively at Muncie and Marion in the Northern District thereof.

The defendant, Herbert M. Spencer, is the duly elected, qualified and acting Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana, wherein complainant's principal place of business is situate, and resides at Indianapolis in the Southern District of Indiana.

General Motors Corporation is a corporation engaged in

manufacturing many and diverse products, including automobiles, electric refrigerators and the like.

2

During the time it has been in said business, complainant has sold approximately 1200 automobiles, new and used, of which 481 were sold by it during the first five months of the year 1935, in the aggregate retail price of approximately $164,000.00. Based on orders and sales prospects, complainant expects to sell approximately 495 cars in the period of six months expiring at the close of the year 1935. The net worth of the business of complainant is in excess of $3,000.

3

Complainant sells automobiles at retail either for cash at what is known as a cash sale price, which does not in any instance exceed $1,500 for any one automobile, or on the instalment plan under a written contract of purchase [fol. 51] and sale, wherein a price is fixed by agreement between the parties as the purchase price of the automobile. The price fixed in the written contract for sales on the instalment plan is known as the time price, and may be and usually is higher than the price for the same automobile on a sale for cash. From 60% to 65% of complainant's total sales of new and used cars have consisted of such instalment or time sales.

4

If a customer chooses to buy an automobile from complainant, it is optional with him to buy it for cash at complainant's cash price or on time at the instalment sale or time price, as suits his own purpose, convenience or preference. In its retail sales, complainant may quote to the customer one or both of its said prices, depending on the customer's request for information concerning complainant's cash or time price, or both. In many instances of new car sales, due either to the public advertisements of f. o. b. and/or delivered cash prices, or from tags or placards bearing such information on the cars displayed in complainant's place of business, the buyer is already acquainted with the cash sale price which he would expect

the complainant to quote, and only the complainant's time price is requested by and quoted to him.

5

If the retail buyer chooses to purchase an automobile on the instalment plan, the complainant's time price is the agreed price of its sale and purchase. The amount of the price finally agreed upon by the complainant may [fol. 52] have been determined by it arbitrarily or with reference to the rate or time payment charts and other data supplied by G. M. A. C. in the manner described hereinafter in Finding No. 12. Each instalment sale made by complainant is evidenced by a contract of conditional sale at the agreed price, payable in instalments, and reserving title to the automobile so sold in complainant or its assigns until full payment of the agreed price by the retail buyer.

6

In arriving at its time price in instalment sales, complainant increases the cash price for which it would have sold the automobile, if it were a cash sale, by an amount which is sometimes known and designated as the differential; but the time price appearing as the purchase price in the conditional sale contract is the only price agreed upon between complainant and retail buyer for the sale and purchase of an automobile. There is no agreement between the complainant and the retail buyer for a cash sale at complainant's cash price, nor is there any agreement for the retail buyer's payment of complainant's cash price, as if the sale were for cash, plus an additional amount equal to the difference between the agreed price and the price at which complainant would have agreed to sell the automobile if the sale were for cash. The one and only contract between complainant and retail buyer is the instalment contract of sale and purchase of the automobile at the price agreed to be paid by the retail buyer.

[fol. 53] 7

Among the factors which may influence complainant in fixing the time price in instalment sales of automobiles is the cost of insurance protection for the retail buyer who is a party to the instalment sale. Complainant, in most

instances of instalment sales where insurance is not carried by the retail buyer, represents that fire and theft and accidental physical damage coverage, usually collision coverage as well, is to be procured by complainant at its expense or by and at the expense of its assignee.

8

At or before the execution of each instalment sale contract, the buyer is required by complainant to make a down payment in cash or its equivalent, generally to the extent of one-third of complainant's price for the same automobile on a sale for cash, and the retail buyer becomes obligated to pay the unpaid balance of the time price in instalments according to the schedule and provisions therefor in the contract of conditional sale.

9

The manner in which complainant makes instalment sales to retail buyers is typical of instalment sales by most automobile dealers and those of other products, whatever may be the type of finance company with which the dealer may do business. It is the practice of some merchants in certain goods and commodities, such as furniture and jewelry, [fol. 54] to quote or mark their goods with only a time price, from which they may make a reduction for a cash purchase.

10

Aside from any purely arbitrary determination of the time price which complainant may make as to any automobile owned by it, and in addition to the insurance factor mentioned in Finding No. 7, the time price in installment sales of merchandise, specifically automobiles in complainant's case, involves and reflects allowance for other cost and risk factors determined, from experience, as necessary elements in instalment sale prices of merchandise whether the instalment sale contracts resulting from such transactions are retained and handled by complainant or they are sold to and handled by an assignee. Such factors require allowance for cost, expense and loss hazard incident to the handling and collection of the instalment contract obligation and include the investment of capital involved in the sale on credit, the expense of investigating the retail buy-

er's ability to pay, the cost and expense of preparing contracts and other forms, setting up and keeping books and accounts and the manifold tasks in the collection and posting of instalments of the unpaid balance under such instalment sale obligations, the cost of effecting repossessions upon default on the part of the buyer as obligor thereunder, the expense of court proceedings and attorneys' fees, and provision for reserves against the risk of loss due to the buyer's failure to pay and either the seller's inability to repossess the goods at all or excessive depreciation in value thereof, below the amount unpaid, to the prejudice of the resale value of the goods in the event of repossession.

[fol. 55] 11

During all times mentioned herein, G. M. A. C. has been engaged in the business of purchasing retail instalment sale contracts covering products manufactured by General Motors Corporation or its divisions, such as Chevrolet Motor Company. Since its organization, complainant has sold and desires to continue to sell to G. M. A. C. its instalment sale contracts at such prices and on such terms and conditions as from time to time have been and may be agreed up on by them.

12

Complainant may offer its retail instalment sale contracts to G. M. A. C. or any other finance company for purchase, or may retain ownership of them. G. M. A. C. is under no obligation to accept or purchase the retail instalment sale contracts of complainant. The arrangement under which complainant does business with G. M. A C. is that such purchases of retail instalment contracts as G. M. A. C. makes from complainant are subject to and governed by the terms and conditions of the G. M. A. C. retail plan, a copy of which has been supplied to complainant as well as to each dealer interested in offering such contracts to G. M. A. C. for purchase.

The G. M. A. C. retail plan is the name given by G. M. A. C. to describe the business of purchasing retail instalment contracts from retail sellers covering sales made to customers, in which the terms, time prices and credit standing of the customer are satisfactory to G. M. A. C. Under

this plan both new and used car instalment contracts are purchased.

The G. M. A. C. retail plan not only includes the terms and conditions, restrictions and limitations under which the [fol. 56] retail instalment contracts are purchased from dealers and the relative rights of the parties in the transaction, but also suggests the salesmanship procedure to be used in negotiating instalment sales, the manner in which the sales should be closed, the use of the payment charts, the investigation of the customer's credit statement, and the manner in which the contract arising out of the retail instalment sale may be sold to G. M. A. C.

Under the G. M. A. C. retail plan complainant, in the event it desires to submit any given retail instalment contract to G. M. A. C. for purchase, assigns and guarantees the retail instalment contract to G. M. A. C. in accordance with the terms of an assignment and guaranty printed on the contract supplied to complainant by G. M. A. C. This form is designated on the contract as "Dealer's Recommendation, Assignment and Guaranty." In the event the terms of the contract and other matters relating thereto are satisfactory to G. M. A. C., the contract will be purchased by it at a price agreed upon by G. M. A. C. and complainant, usually an amount equal to the unpaid balance owing on the contract less the differential which has been added by complainant in accordance with the time payment charts supplied by G. M. A. C.

The assignment and guaranty are modified as to complainant's liability thereon in accordance with the terms of the G. M. A. C. retail plan relating to dealer protection and reserve. Under the terms of the plan relating to dealer protection and reserve, complainant will be protected against liability or loss, as the case may be, on contracts purchased by G. M. A. C. subject to the following terms and conditions:

(1) G. M. A. C. agrees that complainant will be relieved of responsibility on its guaranty in any instance where the [fol. 57] repossessed car is not returned to complainant.

(2) G. M. A. C. agrees that complainant will be relieved of responsibility on its guaranty in the event of conversion or embezzlement of cars by customers, such conversion to be existent when (a) it is determined that a car has been

wrongfully sold, mortgaged, converted or embezzled, or (b) that a car can not be located and returned to complainant within ninety days after the date of default by the customer.

(3) G. M. A. C. agrees that complainant will be relieved of responsibility on its guaranty in the event cars are confiscated by Federal, state or municipal authorities and the cars are not recovered and returned to complainant within ninety days after default by the customer.

(4) G. M. A. C. agrees that complainant will be relieved of responsibility on its guaranty, in the instances hereinafter detailed, to the extent of collision losses suffered wherever repossession occurs as a direct result of a proven collision and when the resale value of the car after collision is less than the unpaid balance on the retail instalment contract. This protection is given (a) on used cars with unpaid balances less than $130 where specific collision insurance has not been provided the customer and dealer, (b) on those transactions where collision insurance may have been waived on agreement with the G. M. A. C. branch, and (c) on losses which may arise from the deductible under the specific collision insurance.

G. M. A. C. during all times herein mentioned provided complainant with forms of retail instalment contracts known as "Conditional Sale Contract" to be used by such retail sellers in instalment sales, which form is as follows:

(Here follow 2 photos folios 58 and 58½)

ORIGINAL

CONDITIONAL SALE CONTRACT

Contract Number _____

The undersigned seller hereby sells, and the undersigned purchaser or purchasers, jointly and severally hereby purchase(s), subject to the terms and conditions hereinafter set forth, the following property, complete with standard attachments and equipment, delivery and acceptance of which is hereby acknowledged by purchaser, viz:

	New or Used	Year Model	No. Cyl.	Make Trade Name	Type of Body If Truck, Give Tonnage	Model Letter or Number	Motor No.	Manufacturer's Serial No.
ONE								

RADIO—Make_____ Model_____ Serial No._____

For a **total time price** of $_____(9)_____, payable as follows: $_____(5)_____ **on or before delivery,** leaving a **deferred balance** of $_____(8)_____ payable at the offices of General Motors Acceptance Corporation of Indiana, Incorporated to be hereafter designated **in instalments of** $_____(7A)_____, on the same day of each successive month, or as indicated in schedule of instalments below, and commencing_____19_____; and the final instalment payable hereunder shall equal the amount of the deferred balance remaining due. Interest is due on instalments after maturity at the highest lawful contract rate, and if this contract be placed with an attorney for collection, 15% of the amount due hereunder as attorney's fees, or if prohibited, the amount permitted by law.

Schedule for unequal monthly instalments

$_____1 Mo. hereafter
$_____2 Mos. hereafter
$_____3 Mos. hereafter
$_____4 Mos. hereafter
$_____5 Mos. hereafter
$_____6 Mos. hereafter
$_____7 Mos. hereafter
$_____8 Mos. hereafter
$_____9 Mos. hereafter
$_____10 Mos. hereafter
$_____11 Mos. hereafter
$_____12 Mos. hereafter
$_____ _____
$_____ _____
$_____ _____
$_____ _____
$_____ _____
$_____ _____

1. Title to said property shall not pass to purchaser until said amount is fully paid in cash.
2. No transfer, renewal, extension or assignment of this contract or any interest thereunder, or loss, injury or destruction of said property shall release purchaser from his obligation hereunder; assignee shall be entitled to all the rights of seller.
3. In the event purchaser defaults on any payment due on this contract or fails to comply with any condition of this contract or a proceeding in bankruptcy, receivership or insolvency be instituted against the purchaser or his property, or seller deems the property in danger of misuse or confiscation, the full amount shall be immediately due and payable; the seller's acceptance, after the full amount may have become immediately due and payable as hereinbefore provided, of any instalment or payment shall not be deemed to alter or affect the purchaser's obligations and/or the seller's rights hereunder with respect to any subsequent payments or default therein.
4. No warranties, expressed or implied, representations, promises or statements have been made by seller unless endorsed hereon in writing.
5. Purchaser shall keep said property free of all taxes, liens and encumbrances; shall not use same illegally, improperly or for hire; shall not remove same from the state without permission of the holder of this contract; shall not transfer any interest in this contract or said property. Any sum of money paid by the seller in payment or discharge of taxes, liens and encumbrances on said property shall be secured by and under this contract. The proceeds of any insurance, whether paid by reason of loss, injury, return premium or otherwise, shall be applied toward the replacement of the property or payment of this obligation, at the option of seller. Seller may insure said property against fire and theft, or any accidental physical damage to the car to protect purchaser, seller or seller's assignee. Purchaser agrees to pay the premium upon demand and that on failure to do so, payment of said premium shall be secured by this contract.
6. Time is of the essence of this contract, and if purchaser default in complying with the terms hereof, or seller deems the property in danger of misuse or confiscation, seller or any sheriff or other officer of the law may take immediate possession of said property without demand (possession after default being unlawful), including any equipment or accessories thereto; and for this purpose seller may enter upon the premises where said property may be and remove same. Seller shall retain all payments made by the purchaser prior to repossession hereunder. Seller may resell said property, so retaken, at public or private sale, without demand for performance, with or without notice to purchaser (if given, notice by mail to address below being sufficient), with or without having such property at place of sale, and upon such terms and in such manner as seller may determine; seller may bid at any public sale. From proceeds of any such sale, seller shall deduct all expenses for retaking, repairing and selling such property, including a reasonable attorney's fee. The balance thereof shall be applied to amount due; any surplus shall be paid over to purchaser; in case of deficiency purchaser shall pay the same with interest. Seller may take possession of any other property in the above described motor vehicle at time of repossession and hold same temporarily for purchaser without liability on the part of seller.
7. Seller shall have the right to enforce one or more remedies hereunder, successively or concurrently. Purchaser hereby waives the right to remove any legal action from the court originally acquiring jurisdiction and waives all homestead and other property exemption laws. Any provision of this contract prohibited by law of any state shall as to said state be ineffective to the extent of such prohibition without invalidating the remaining provisions of the contract.

Executed in triplicate, one copy of which was delivered to and retained by purchaser, **this**_____**day of**_____, **19**_____
(Do not date on Sunday)

Purchaser Signs

_____ _____
(Purchaser's Signature) (Title, if Company)

(Street) (Town) (State)

Seller Signs

_____ _____
(Seller's Signature) (Title, if Company)

(Street) (Town) (State)

_____ _____
(Witness) (Witness)

SIGN IN INK

DEALER'S RECOMMENDATION, ASSIGNMENT AND GUARANTY

TO GENERAL MOTORS ACCEPTANCE CORPORATION OF INDIANA, INCORPORATED:

For value received, undersigned does hereby sell, assign and transfer to the General Motors Acceptance Corporation of Indiana, Inc., his, its or their right, title and interest in and to the within contract, herewith submitted for purchase by it, and the property covered thereby and authorizes said General Motors Acceptance Corporation of Indiana, Inc. to do every act and thing necessary to collect and discharge the same.

The undersigned certifies that said contract arose from the sale of the within described property, warranting that title to said property was at time of sale and is now vested in the undersigned free of all liens and encumbrances; that said property is as represented to the purchaser of said property by the undersigned and that statements made by the purchaser of said property on the statement form attached hereto are true to the best of the knowledge and belief of the undersigned.

In consideration of your purchase of the within contract, undersigned guarantees payment of the full amount remaining unpaid hereon, and covenants if default be made in payment of any instalment herein to pay the full amount then unpaid to General Motors Acceptance Corporation of Indiana, Inc. upon demand, except as otherwise provided by the terms of the present General Motors Acceptance Corporation of Indiana, Inc. Retail Plan. Liability of the undersigned shall not be affected by any settlement, extensions, variation of terms of the within contract effected with, or by the discharge or release of the obligation of, the purchaser or any other person interested, by operation of law or otherwise. Undersigned waives notice of acceptance of this guaranty and notices of non-payment and non-performance.

Seller Signs

_____ _____
(Seller's Signature) (Title, if Company)

GMAC 129A-25M-8-35

(For use in Indiana)

Printed in U.S.A.

GUARANTY

In consideration of the making of the within contract by the dealer therein, the undersigned does hereby guarantee to said dealer, or any assignee of said contract, payment of all deferred payments as specified therein and covenants in default of payment of any instalment or performance of any requirement thereof by purchaser to pay full amount remaining unpaid upon demand. The liability of the undersigned shall not be affected by any settlement, extensions, variation of terms of the within contract effected with, or by the discharge or release of the obligation of, the purchaser or any other person interested, by operation of law or otherwise. Notice of acceptance of this guaranty, notices of non-payment and non-performance, notices of amount of indebtedness outstanding at any time, protests, demands, and prosecution of collection, foreclosure and possessory remedies, and the right to remove any legal action from the court originally acquiring jurisdiction, are hereby expressly waived.

WITNESS:

—

_____

(Guarantor)

_____

(Address)

[fol. 59] Along with the form of contract supplied as in the preceding paragraph set forth, G. M. A. C. supplied complainant with a form of work sheet which is as follows:

130—600M-7-35
ED IN U. S. A.

DEALER'S WORK SHEET

(DEALER FILLS IN BEFORE COMPLETING CONTRACT)

SUBMIT CONTRACT AND THIS FORM TO GMAC

RIPTION OF TRADE-IN:

.....MODEL.....YEAR.....

R NO.....SERIAL NO.....

RACT HAS BEEN FILED OR RECORDED IN:

.....ON.....19....

CITY OR COUNTY TOWNSHIP MONTH DAY

CAR BE USED FOR LIVERY AND RENTING . . . . . { YES ☐ NO ☐

ED CAR—CAR WAS TAKEN IN TRADE FROM:

.....

NAME ADDRESS

.....19.....IN THE SALE OF A GENERAL MOTORS CAR FOR WHICH

.....WAS ALLOWED AND $.....SPENT IN RECONDITIONING AS FOLLOWS:

.....

.....

COMMERCIAL CAR—NATURE OF WORK IN WHICH CAR WILL BE USED.....

.....

RACT COVERS—

HASSIS ONLY ☐; CHASSIS AND CAB ☐; CHASSIS, CAB AND BODY ☐.

CASH DELIVERED PRICE . . . . . (1) $.....

TERRITORY AMOUNT—CHART NO.....
(DO NOT FILL IN WHEN SIMPLIFIED CHART IS USED) . . . . . (2) $.....

FILING OR RECORDING FEE . . . . . (3) $.....

BASIC TIME PRICE (*Add 1, 2 and 3*) . . . . . (4) $.....

DOWN PAYMENT $.....PLUS $..... . (5) $..... ★
Net Trade-in *Actual Cash*

UNPAID BALANCE (*Subtract 5 from 4*) . . . . . (6) $.....

TIME PRICE DIFFERENTIAL—CHART NO..... . (7) $.....

AMOUNT OF CONTRACT (*Add 6 and 7*) . . . . . (8) $..... ★

TOTAL TIME PRICE (*Add 5 and 8*) . . . . . (9) $..... ★

COLLISION DEDUCTIBLE $..... NO. OF MOS..... INSTALMENTS $..... ★

7A

EXTRA EQUIPMENT, IF ANY, INCLUDED IN ITEM 1.

RADIO $..... OTHER EQUIPMENT $.....

FILL IN RADIO SECTION OF CONTRACT

☞ *IMPORTANT—Copy the Four Figures Marked with ★ on Contract*

DEALER SIGNS ☞ _____

DATE.....19.....BY.....
(TITLE, IF COMPANY)

FOR USE BY GMAC ONLY

PURCHASER GRADING

BEFORE INVESTIGATION	GMAC G	GMAC F	GMAC P
URRENT EARNINGS			
ERMANENT EMPLOYMENT			
ESERVE ASSETS			
COMMERCIAL VEHICLE—EARNINGS			
OWN PAYMENTS—PURCHASER EQUITY			
USED CAR—MARKET VALUE			
ATES OF PAYMENTS CONFORM-G WITH DATES AND AMOUNTS F INCOME			
NAL GRADE			
AFTER INVESTIGATION			
RADE OPINIONS FOR REPUTATION EETING OBLIGATIONS PROMPTLY			
EPUTATION—CHARACTER			
ONSENSUS OF OPINION—HECKING AGENCIES			
NAL GRADE			

PREVIOUS PURCHASER EXPERIENCE CONTRACT NO.

CAR RELEASED

GUARANTOR

SIGNATURE O. K.

EXCESS BALANCE SHORT $

EXCESS TERMS NO. MOS.

MANAGEMENT APPROVAL FOR PURCHASE

AMOUNT OF CONTRACT . . . . . $.....

DIFFERENTIAL . . . . . $.....

RECORDING FEE . . . . . $..... $..... $.....

DEDUCTION ACCT. NO..... . . . . $.....

DEDUCTION ACCT. NO..... . . . . $.....

CHECK NO.....AND AMOUNT . . . . . $.....

$..... UNPAID BALANCE DIFFERENTIAL . . . . . $.....

32-5 . . . . . $.....

32-5 . . . . . $.....

$..... 32-5 REC. FEE . . . . . $.....

$..... 35-1 . . . . . $..... $.....

32-1 . . . . . $.....

DEALER NO.	% D. P.	EST. VALUE	COLL.	TERM	DUE	IRREG.	CLASS & UNIT

GMAC REMARKS

PROOF OF PAYMENTS

PAYMENTS STARTING.....

@ =

@ =

@ =

@ =

TOTAL $

GMAC APPROVAL FOR PURCHASE

DATE 19

56A

GMAC 130

CUSTOMER'S STATEMENT

MAKE OF CAR	MODEL	YEAR	NEW ☐	USED ☐	CASH DELIVERED PRICE . . . . . $
DESCRIPTION OF TRADE-IN			MOTOR NO.		NET TRADE-IN ALLOWANCE $
MAKE	MODEL	YEAR	SERIAL NO.		CASH DOWN . . . . . $
APD. INSURANCE ☐	NO. OF MONTHS		INSTALMENTS $		TOTAL DOWN PAYMENT . . . . . $
DEALER	NAME		ADDRESS		UNPAID BALANCE . . . . . $

CUSTOMER'S FULL NAME	FIRST	MIDDLE	SUR-NAME	DATE OF BIRTH	COLOR	MARRIED ☐ NO. OF DEPENDENTS
HOME ADDRESS	STREET	APT. NO.	CITY	COUNTY	LIVED AT ADDRESS HOW LONG ..... YEARS ..... MONTHS	PHONE NO.
IF RENTING NAME OF LANDLORD				ADDRESS		
PREVIOUS ADDRESS	STREET		CITY	STATE	LIVED AT ADDRESS HOW LONG ..... YEARS ..... MONTHS	
EMPLOYED BY	SELF ☐ OTHERS ☐	FIRM NAME		EMPLOYED HOW LONG ..... YEARS ..... MONTHS		PHONE NO.
BUSINESS ADDRESS	STREET		CITY	STATE	DEPARTMENT	BADGE NO.
OCCUPATION OR TRADE				TRADE UNION	NAME AND NUMBER	CITY
MONTHLY INCOME $	SALARY ☐ COMMISSION ☐	DATE RECEIVED	MOST CONVENIENT DATE FOR MAKING PAYMENTS	OTHER INCOME $	DESCRIBE	
PREVIOUSLY EMPLOYED BY	FIRM NAME AND ADDRESS			OCCUPATION OR TRADE	EMPLOYED HOW LONG ..... YEARS ..... MONTHS	
BANK WITH				ADDRESS		CHECKING ☐ SAVINGS ☐
LIFE INSURANCE	NAME OF COMPANY			ADDRESS WHERE PREMIUM PAYABLE		
WIFE'S NEAREST RELATIVE NOT LIVING WITH ME	NAME			ADDRESS		RELATIONSHIP
MY NEAREST RELATIVE, NOT LIVING WITH ME	NAME			ADDRESS		RELATIONSHIP

REFERENCES: BUSINESS HOUSES AND INDIVIDUALS WITH WHOM I (WE) HAVE HAD CREDIT OR INSTALMENT DEALINGS

	NAME	ADDRESS
PURCHASED LAST CAR FROM		
FINANCE COMPANY		
BUSINESS REFERENCE		
PERSONAL REFERENCE		
PERSONAL REFERENCE		

I (WE) OWN THE FOLLOWING REAL PROPERTY LOCATED AT

STREET	CITY	STATE	TOTAL CASH VALUE	TOTAL ENCUMBRANCE	TITLE IN NAME OF

ADDRESS OF GARAGE WHERE CAR WILL BE KEPT — LICENSE No. STATE — DRIVER'S LICENSE No.

DEALER REMARKS

UNDERSIGNED WARRANTS THE TRUTH AND ACCURACY OF FOREGOING INFORMATION

CUSTOMER SIGNS ☞ _____

SALESMAN SIGNS ☞ _____ DATE ..... 19.....

[fol. 61] That certain small numerals appearing on the right-hand side of the work sheet correspond with the same small numerals appearing at the blanks in the conditional sale contract, and indicate to the complainant the amount which should be filled in in the corresponding blanks in the contract, if the said contract is to be offered to G. M. A. C. for purchase.

13

In anticipation of complainant's offering instalment contracts to G. M. A. C. for purchase and as a convenience to complainant, G. M. A. C. furnishes it with material for the purpose of facilitating and expediting the sale and purchase of its instalment sale contracts. The form of conditional sale contract used by complainant in its instalment sales is the form supplied by G. M. A. C., without cost to complainant, for use by the latter in contemplation of offering to G. M. A. C. for purchase, and represents the type of contract which, as holder thereof after purchase from complainant, G. M. A. C. considers most suitable for the protection of its interests.

14

Similarly, G. M. A. C. furnishes complainant with rate or payment charts designed for new and used passenger and commercial cars. By means of these charts complainant, after it has ascertained the amount of the down payment which will be paid by the retail buyer on delivery of the car, and the number of instalments into which the retail [fol. 62] buyer wishes the remainder of the price to be divided, and the type of car to be purchased, is enabled to determine quickly and accurately the amount to be inserted in the contract provided by G. M. A. C. at the place designated "total time price" and indicated in the contract by the number (9) which corresponds to the same figure on the work sheet provided to the dealer by G. M. A. C. It is not necessary for complainant to follow the forms provided by G. M. A. C. or to compute the total time price in the manner suggested by G. M. A. C. in its charts, or to fill out the retail instalment contract blanks according to the computations indicated in the work sheet provided by G. M. A. C., unless the dealer expects to offer the retail in-

stalment contract to G. M. A. C. for purchase at a price, indicated in the chart as the unpaid balance of complainant's price on a cash sale, which price, together with the down payment received from the retail buyer in the sale, enables complainant, in the event G. M. A. C. purchases the contract in any instance, to realize out of the two transactions a total amount equal to its price for a cash sale of the automobile.

15

If and when G. M. A. C. accepts any contract for purchase from complainant, the transfer is effected by complainant's assignment and delivery thereof to G. M. A. C. which thereupon pays to it, as the price agreed upon by them, the unpaid balance indicated in the chart as aforesaid. Such price paid by G. M. A. C. is less than the face value of the retail buyer's contract obligation for the unpaid balance of [fol. 63] the contract price, to the extent of the difference between the complainant's price for a cash sale and the price fixed in the contract between retail buyer and complainant.

16

As a consequence of such sale of any contract, complainant is relieved of the cost, expense and risk incident to the carrying, collection and handling thereof, which are assumed by G. M. A. C. as purchaser and owner, subject only to the qualification that, in accordance with the terms and conditions of the G. M. A. C. retail plan governing the complainant's sale of contracts to G. M. A. C., complainant may be required to take over an automobile repossessed by G. M. A. C. on the retail buyer's default and would incur a loss if, and only in the contingency that, the car had depreciated in the retail buyer's hands to such an extent that its resale value would be less than the amount (i. e. the unpaid balance of the purchase price, less any collision allowance) paid by complainant on taking over the automobile. While the sale and transfer of the contract includes the complainant's guaranty of the retail buyer's payment of the contract obligation, its contingent liability thereunder is limited by the terms and conditions of the G. M. A. C. retail plan to the risk of loss in that contingency only.

17

As a part of the arrangement between them under the terms of said retail plan, G. M. A. C. engages, with respect to the retail contracts it may purchase from complainant, [fol. 64] to protect the latter against the sole loss hazard referred to in Finding No. 16, by setting up and crediting a reserve account in the dealer's favor with a stipulated portion out of G. M. A. C.'s differential, i. e., the difference between the price paid by it to the complainant on the purchase of the contract and the amount of the contract. Complainant receives payment from G. M. A. C. out of the accumulated reserve fund from time to time.

G. M. A. C.'s experience over many years shows a normal of between three and seven repossessions of new cars out of every 100 financed, depending on the retail seller and the territory covered. On used cars the number of repossessions varies between 7 and 15, depending on the retail seller's used car policies and the territory covered. Whether a loss is suffered by the retail seller in the event of a repossession depends upon the resale value of the merchandise. The amount of the reserve which G. M. A. C. agrees to set aside for the retail seller is calculated upon the basis of its experience and that of dealers in all sections of the country, and is so fixed, in the opinion of G. M. A. C., as to be sufficient, in the case of the average dealer, to cover all losses and provide an additional margin over losses in excess of the actual loss experience.

18

The complainant and the retail buyer are the only parties to the instalment contract and sale; and the differential used by complainant in fixing the time price to any retail buyer may be determined by complainant solely and independently of the charts of G. M. A. C. or any other company in the business of purchasing instalment con- [fol. 65] tracts. Complainant may not even intend to dispose of the contract, but even if it should desire to do so complainant is not able to determine, when fixing the time price, whether the instalment contract will be purchased by G. M. A. C. or some other company, because G. M. A. C. and other companies engaged in the same business have no obligation whatsoever to purchase contracts offered by retail

sellers; and complainant can not determine whether it may be required to hypothecate the contract with a bank or other financial agency, or be forced to carry it.

The practice of all retail sellers, including complainant, who sell automobiles by means of retail instalment contracts, is to compute the time price according to the rate or payment charts and other memoranda or data provided by the finance company to which the retail seller usually offers retail instalment contracts for sale, and this is usually true even though the retail seller intends to keep the contract.

19

Various and numerous loan agencies and facilities exist and are available to lend money to persons for the purchase of an automobile or radio, jewelry, furniture, or any other commodity.

20

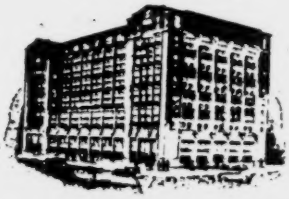
The facilities of many companies located in Indiana and engaged in the business of purchasing retail instalment sales contracts from retail sellers are available to com- [fol. 66] plainant. Not less than 140 such companies in the State of Indiana are engaged in the business. The methods of doing and carrying on the business with retail sellers is essentially identical with the method and manner in which G. M. A. C. carries on its business, except as pointed out in Finding No. 22 and except that many of the 140 finance companies are not affiliated directly or indirectly with any manufacturer of merchandise, and do not refrain from doing business with any retail seller, whatever merchandise he may be selling, if the contracts offered to such finance companies by such retail sellers are satisfactory as to terms and conditions. Each of the finance companies engaged in the business in Indiana maintains an office organization, equipment and personnel to carry on its functions in the business in which it is engaged, and sets up an account for the retail contracts purchased by them. Each of the finance companies takes the foregoing elements into consideration as well as other costs of doing business, including cost of capital, cost of insurance and profit, in determining the differential or discount of the finance company for purchasing the contracts.

Most of the finance companies doing business in Indiana, as well as G. M. A. C., furnish rate or payment charts, forms of contracts, work sheets and similar data to retail sellers generally, in the same manner that like material is furnished to General Motors Corporation's retail sellers by G. M. A. C. One rate chart in use in Indiana is as follows:

(Here follow 2 photos, folios 67 and 67½)

Automobile Retail Plan

For New Cars Only



HOW TO USE PLAN

EXAMPLE:

Delivered Price	$900
Down Payment	300
Unpaid Balance	$600

Under Unpaid Balance Column you will find $600, follow line to right for number of months and size of payments desired. If 12 months is desired the payments will be $55.00 each; 10 months, $65.70 etc.

No charges on deferred payments if purchaser pays on or before maturity. If not so paid necessary collection charges are added.

DOWN PAYMENT

MUST BE CASH OR TRADE-IN ALLOWANCE

MINIMUM DOWN PAYMENT: 33⅓% OF THE CASH SELLING PRICE.

INSURANCE

CUSTOMARY COVERAGE

Fire and Theft Insurance—80% of Cash Selling Price.

For maximum insurance protection when the Down Payment is more than 60%, add ¼ of 1% of the Cash Selling Price to the amount of the note.

This rate sheet has been carefully prepared as a guide to sound financing, after investigating automobile time sales methods and rates throughout the United States and is distributed for the convenience and benefit of automobile dealers.

Associates Investment Company

Executive Office

ASSOCIATES BLDG. SOUTH BEND, IND.

E. M. Morris, President Lew Fleming, Secretary

Akron, O., 1822 First Central Trust Bldg.
Ann Arbor, Mich., 411 First National Bank Bldg.
Battle Creek, Mich., 316 City Nat'l Bank & Trust Bldg.
Canton, O., 1101-02 Geo. D. Harter Bank Bldg.
Cleveland, O., 401 Union Bldg
Detroit, Mich., 816 Marcuhere Bldg.
Elkhart, Ind., Room 1-2, 301 South Main St.
Flint, Mich., 1106 Union Industrial Bank Bldg.
Ft. Wayne, Ind., 513 Old First Bank Bldg.
Gary, Ind., 444 Gary State Bank Bldg.
Grand Rapids, Mich., 409 Ass'n of Commerce Bldg.
Hammond, Ind., 517 First Trust Bldg.
Indianapolis, Ind., 415 Medical Arts Bldg.
Jackson, Mich., 701 Central State Bank Bldg.
Kalamazoo, Mich., 406 Peck Bldg.
Lansing, Mich., 409 Mutual Bldg.
Minneapolis, Minn., 506-507 Wesley Temple Bldg.
Muncie, Ind., 303 Western Reserve Bldg.
Muskegon, Mich., 422 Lyman Bldg.
Pontiac, Mich., 409 Pontiac Com'l Bank Bldg.
Port Huron, Mich., 215 W. S. Savings Bank Bldg
Saginaw, Mich., 414 Building & Loan Bldg.
Toledo, O., 316-321 Richardson Bldg.
Washington, D. C., 629 Tower Bldg.
Youngstown, Ohio, 1116 Mahoning Bank Bldg.

ASSOCIATES DISCOUNT CO.

Albany, N. Y., 711 Home Savings Bank Bldg.
Binghamton, N. Y., 702 Security Mutual Life Bldg.
Buffalo, N. Y., 310 Vars Building
Jamestown, N. Y., 204-205 The Bank of Jamestown Bldg
Niagara Falls, N. Y., 804 N. F. Trust Co. Bldg.
Rochester, N. Y., 34 State St.
St. Louis, Mo., 416 Missouri Theatre Bldg.
Syracuse, N. Y., 800 State Tower Bldg.

ASSOCIATES INVESTMENT CO. of Illinois

Chicago, Ill., 306 Lake Shore Trust and Sav. Bank Bldg
Erie, Pa., 822 Erie Trust Bldg.
Milwaukee, Wis., 804 Milwaukee Gas Light Co. Bldg
Philadelphia, Pa., 945 Nordt Bldg.
Springfield, Ill., 420 Reisch Bldg.

67

RETAIL TIME SALES PLAN FOR NEW CARS ONLY

Unpaid Balance Column — When the Unpaid Bal. is	Schedule of Monthly Installments and Total Amount of Note							
	12 Monthly Installments		10 Monthly Installments		8 Monthly Installments		6 Monthly Installments	
	Each	Amount of Note	Each	Amount of Note	Each	Amount of Note	Each	Amount of Note
1	.10	1.20	.12	1.20	.15	1.20	.20	1.20
2	.20	2.40	.24	2.40	.30	2.40	.40	2.40
3	.30	3.60	.36	3.60	.45	3.60	.60	3.60
4	.40	4.80	.48	4.80	.60	4.80	.80	4.80
5	.50	6.00	.59	5.90	.70	5.60	.90	5.40
6	.60	7.20	.71	7.10	.85	6.80	1.10	6.60
7	.70	8.40	.83	8.30	1.00	8.00	1.30	7.80
8	.80	9.60	.95	9.50	1.15	9.20	1.50	9.00
9	.90	10.80	1.07	10.70	1.30	10.40	1.70	10.20
200	18.66	223.80	22.35	223.50	27.70	221.60	36.70	220.20
210	19.55	234.60	23.35	233.50	29.10	232.80	38.50	231.00
220	20.45	245.40	24.40	244.00	30.40	243.20	40.30	241.80
230	21.35	256.20	25.45	254.50	31.70	253.60	41.90	251.40
240	22.25	267.00	26.50	265.00	33.00	264.00	43.80	262.80
250	23.10	277.20	27.55	275.50	34.30	274.40	45.50	273.00
260	24.00	288.00	28.60	286.00	35.60	284.80	47.00	282.00
270	24.90	298.80	29.70	297.00	36.90	295.20	48.70	292.20
280	25.80	309.60	30.75	307.50	38.20	305.60	50.40	302.40
290	26.65	319.80	31.80	318.00	39.50	316.00	52.10	312.60
300	27.50	330.00	32.85	328.50	40.80	326.40	53.80	322.80
310	28.35	340.20	33.90	339.00	42.20	337.60	55.65	333.90
320	29.45	353.40	35.15	351.50	43.50	348.00	57.45	344.70
330	30.35	364.20	36.25	362.50	44.80	358.40	59.20	355.20
340	31.25	375.00	37.35	373.50	46.20	369.60	61.10	366.60
350	32.20	386.40	38.40	384.00	47.55	380.40	62.85	377.10
360	33.15	397.80	39.45	394.50	49.00	392.00	64.65	387.90
370	34.05	408.60	40.65	406.50	50.35	402.80	66.45	398.70
380	34.95	419.40	41.65	416.50	51.70	413.60	68.20	409.20
390	35.85	430.20	42.75	427.50	53.00	424.00	69.90	419.70
400	36.70	440.40	43.80	438.00	54.30	434.40	71.70	430.20
410	37.75	453.00	45.05	450.50	55.75	446.00	73.55	441.30
420	38.80	465.60	46.10	461.00	57.10	456.80	75.35	452.10
430	39.85	478.20	47.20	472.00	58.45	467.60	77.20	463.20
440	40.80	489.60	48.25	482.50	59.80	478.40	79.00	474.00
450	41.65	499.80	49.30	493.00	61.15	489.20	80.80	484.80
460	42.55	510.60	50.40	504.00	62.50	500.00	82.55	495.30
470	43.35	519.00	51.50	515.00	63.90	511.20	84.35	506.10
480	44.10	529.20	52.60	526.00	65.25	522.00	86.15	516.90
490	45.00	540.00	53.70	537.00	66.60	532.80	87.95	527.70
500	45.85	550.20	54.75	547.50	67.90	543.20	89.70	538.20
510	46.90	562.80	55.90	559.00	69.30	554.40	91.55	549.30
520	47.80	573.60	57.00	570.00	70.70	565.60	93.35	560.10
530	48.70	584.40	58.15	581.50	72.05	576.40	95.15	570.90
540	49.60	595.20	59.20	592.00	73.40	587.20	96.95	581.70
550	50.55	606.60	60.30	603.00	74.75	598.00	98.70	592.20

Unpaid Balance Column — When the Unpaid Bal. is	Schedule of Monthly Installments and Total Amount of Note							
	12 Monthly Installments		10 Monthly Installments		8 Monthly Installments		6 Monthly Installments	
	Each	Amount of Note	Each	Amount of Note	Each	Amount of Note	Each	Amount of Note
560	51.45	617.40	61.40	614.00	76.10	608.80	100.50	603.00
570	52.35	628.20	62.50	625.00	77.50	620.00	102.30	613.80
580	53.25	639.00	63.60	636.00	78.90	630.40	104.10	624.60
590	54.15	649.80	64.65	646.50	80.25	641.20	105.90	635.40
600	55.00	660.00	65.70	657.00	81.45	651.60	107.60	645.60
610	56.00	672.00	66.80	668.00	82.85	662.80	109.50	657.00
620	56.95	683.40	67.90	679.00	84.25	674.00	111.25	667.50
630	57.90	694.80	69.05	690.50	85.60	684.80	113.05	678.30
640	58.80	705.60	70.15	701.50	86.95	695.60	114.85	689.10
650	59.70	716.40	71.25	712.50	88.30	706.40	116.65	699.90
660	60.60	727.20	72.35	723.50	89.70	717.60	118.45	710.70
670	61.50	738.00	73.45	734.50	91.05	728.40	120.25	721.50
680	62.45	749.40	74.55	745.50	92.40	739.20	122.05	732.30
690	63.35	760.20	75.60	756.00	93.75	750.00	123.80	742.80
700	64.[illegible]	770.40	76.65	766.50	95.05	760.40	125.55	753.30
710	65.30	782.40	77.80	778.00	96.45	771.60	127.40	764.40
720	66.10	793.20	78.90	789.00	97.80	782.40	129.20	775.20
730	67.05	804.60	80.00	800.00	99.20	793.60	131.00	786.00
740	68.00	816.00	81.15	811.50	100.55	804.40	132.80	796.80
750	68.90	826.80	82.25	822.50	101.90	815.20	134.60	807.60
760	69.80	837.60	83.35	833.50	103.25	826.00	136.35	818.10
770	70.75	849.00	84.40	844.00	104.60	836.80	138.15	828.90
780	71.65	859.80	85.50	855.00	105.[illegible]	847.60	139.95	839.70
790	72.50	870.00	86.55	865.50	107.30	858.40	141.75	850.50
800	73.35	880.20	87.60	876.00	108.60	868.80	143.50	861.00
810	74.35	892.20	88.75	887.50	110.00	880.00	145.35	872.10
820	75.20	902.40	89.90	899.00	111.40	891.20	147.15	882.90
830	76.20	914.40	91.00	910.00	112.76	902.08	149.05	893.70
840	77.10	925.20	92.10	921.00	114.10	912.80	150.70	904.20
850	78.00	936.00	93.20	932.00	115.45	923.60	152.50	915.00
860	78.95	947.40	94.30	943.00	116.85	934.80	154.30	925.80
870	79.85	958.20	95.35	953.50	118.15	945.20	156.10	936.60
880	80.75	969.00	96.45	964.50	119.55	956.40	157.90	947.40
890	81.65	979.80	97.50	975.00	120.90	967.20	159.70	958.20
900	82.50	990.00	98.55	985.50	122.20	977.60	161.40	968.40
910	83.50	1002.00	99.70	997.00	123.60	988.80	163.30	979.80
920	84.45	1013.40	100.85	1008.50	125.00	1000.00	165.10	990.60
930	85.35	1024.20	101.95	1019.50	126.35	1010.80	166.85	1001.10
940	86.25	1035.00	103.00	1030.00	127.70	1021.60	168.65	1011.90
950	87.20	1046.40	104.15	1041.50	129.05	1032.40	170.45	1022.70
960	88.10	1057.20	105.25	1052.50	130.40	1043.20	172.25	1033.50
970	89.00	1068.00	106.30	1063.00	131.75	1054.00	174.05	1044.30
980	89.95	1079.40	107.40	1074.00	133.10	1064.80	175.85	1055.10
990	90.85	1090.20	108.45	1084.50	134.45	1075.60	177.65	1065.90
1000	91.70	1100.40	109.50	1095.00	135.75	1086.00	179.35	1076.10

When Unpaid Balance exceeds $1000.00, use two amounts in Unpaid Balance Column which will equal the amount desired.

Add 50c per installment for Commercial Cars and Trucks.

For maximum insurance protection, when the Down Payment is more than 60% add ½ of 1% of the Cash Selling Price to the amount of the note.

—COURTESY— —SERVICE—

[fol. 68] In their essentials the forms of contract and other material furnished to the retail seller by the finance companies other than G. M. A. C. are not different from those furnished to General Motor's Corporation's retail sellers by G. M. A. C. The form of contract generally provides for a total time price to be paid by the retail buyer, the division of the unpaid balance of the purchase price into instalments, and the retention of a security interest by the retail seller in the merchandise sold.

The rate charts which are furnished to the retail seller by the finance companies are so set up that the amount of the finance charge can be computed on any conceivable dollar basis that remains after the purchaser is given credit for the amount of his down payment against the cash sale price of the merchandise purchased, and after the length of time for payment has been determined by the parties. Some finance companies have many different rate charts for the same new car as well as for old ones.

22

The principal difference between the various finance companies doing business in Indiana, including G. M. A. C., so far as their methods of doing business are concerned, is in the terms and conditions under which they purchase retail instalment contracts from retail sellers. Some companies purchase these contracts on a "with recourse" basis, others purchase on a "without recourse" basis, and still others, including G. M. A. C., purchase on what is known as a "with repurchase" basis.

The terms "without recourse" and "with recourse" have a definite meaning to retail sellers and complainant [fol. 69] and in the finance business. The first means that the finance company is to accept the retail instalment contract which it may purchase from complainant without any right whatsoever against it as the assignor thereof or otherwise in the event the purchaser of the automobile defaults in his obligations under the conditional sale contract. In the event of default the finance company suffers whatever loss there may be. The term "with recourse" on the other hand means that complainant will perform the obligations of the retail buyer in the event the latter defaults under the conditional sale contract, and the result is that when a default occurs, complainant

must pay the finance company the unpaid balance owing by the retail buyer at the time of the default and takes the merchandise together with the losses or gains, as the case may be. Few finance companies do business wholly in one way or the other. Part of their business is taken with recourse and part without recourse, depending upon the credit factors involved. Other companies operate on neither plan, but upon a combination of the two whereunder the loss hazard is divided between the dealer and the finance company to which he has assigned his retail instalment contracts. The latter plan is followed by G. M. A. C. and complainant, as to conditional sale contracts sold to G. M. A. C. by complainant, and is known in the trade as "with repurchase".

Under the G. M. A. C. retail plan payment of the unpaid balance owed by the retail buyer is requested from complainant when the repossessed automobile is returned to him, but arrangements may be made by the complainant to extend this request for payment until a buyer has been [fol. 70] found for the automobile within a maximum period of thirty days from the date of repossession allowed.

23

Every finance company and retail seller, as well as complainant, recognizes that losses will occur, and to compensate the finance company as assignee of the retail instalment contract and the retail seller as the original party thereto for such losses, there is included in the differential or discount fixed by the finance company in the rate or payment charts, an amount which may be set aside as a reserve for losses. This amount is included in the differential or discount irrespective of the type of assignment which the finance company requires from the retail seller. Out of the reserve the retail seller and finance company are compensated for losses which occur, and a division of the item may be made between them according to the proportion of the risk of loss borne by each. From time to time, G. M. A. C. advises complainant of the amount of the reserve which is being set up for its benefit out of the differential or discount at which G. M. A. C. purchased the contract.

24

In adding the time price differential or finance charge as it is sometimes known, complainant may not know the

amount which it would cost it to command the capital necessary to carry on its business without the assistance of G. M. A. C., and it may not know the cost of collection or the cost of the loss hazard or other factors involved. Complainant assumes that the factors considered by G. M. A. C. [fol. 71] in making up its differential or discount shown on its rate or payment charts are identical with factors complainant would consider if constructing a time price differential. Complainant sells its contracts because it would not have sufficient capital to carry the same volume of business unless it sells contracts to G. M. A. C. or other finance companies. Complainant accepts and adds to the price of its merchandise, for the purpose of constructing the time price, a time price differential equal to the discount shown by the rate chart prepared by the various competing finance companies, particularly G. M. A. C.

25

A number of other companies engaged in purchasing instalment sale contracts from dealers, purchase such contracts from them on a "without recourse" basis, in which case the dealer, upon transfer of the contract, does not assume any liability or bear the risk of loss in respect of which complainant selling its contract to G. M. A. C. under the Retail Plan is protected by said reserve. It is practice and a part of the arrangement between such companies and dealers from whom they purchase the contracts that the companies pay and the dealers receive an amount, known and designated variously and indiscriminately as "Dealer's Bonus," or "Participation", out of such other companies' differential.

26

The Department of Financial Institutions is a department of government of the State of Indiana created under the Indiana Financial Institutions Act, Acts of the General [fol. 72] Assembly, 1933, Chapter 40, sections 1 and 4. The function of the Department is to supervise, regulate and control the business of banks, trust companies, building and loan associations and other credit agencies, as well as small loan licensees furnishing money in amounts of $300 or less. From the time it was established on July 1, 1933,

it received complaints from different persons directed against various types of financial institutions, including companies engaged in the same business in which G. M. A. C. is engaged, and because of the complaints and in pursuance of its power of investigation, the Department began a study of consumer credit agencies operating in Indiana, the result of which was contained in a report published and presented to the 79th Session of the General Assembly of the State of Indiana, which report was entitled "Indiana Consumer Finance Agencies." The report was not limited simply to finance companies, but included all agencies theretofore under the supervision of the Department, in so far as those agencies and companies supplied credit to consumers, as well as instalment sellers who hold their own paper and companies engaged in the same business in which G. M. A. C. is engaged. A considerable portion of the report was devoted to finance companies and what the report characterized as their "effective rates of interest for the extension of credit", the desirable and undesirable features of the business, as well as the undesirable features of instalment selling by dealers who hold their own paper, and the recommendations of the Department for legislation to restrict the original contract between buyer and seller, as well as supervise finance companies.

[fol. 73] 27

Prior to the enactment of the Retail Instalment Sales Act, the amount of the time price differential or discount was not generally shown as a separate item in the contract between the retail seller and retail buyer, but a sum total price for the merchandise known as "the total time price" included the time price differential. The time price differential was known popularly as "the finance charge." The amount of the finance charge was ascertainable by the retail buyer from the retail seller, or otherwise, by computing the same by deducting the unpaid balance of the cash price, after giving effect to the down payment to be made by the retail buyer, from the amount shown in the rate or payment chart for the corresponding unpaid balance. The finance charge was represented to include cost of insurance, but the actual cost of the insurance, as distinguished from the remaining part of the finance charge, might not be known to the retail seller or to the retail

buyer. Without knowing the insurance cost, the buyer could not compute the actual amount of the time price differential less the insurance cost in terms of interest.

The form of contract supplied to the retail seller by the finance company contemplated the sale of the merchandise at whatever price was agreed upon by the parties and that price was known as "the time price". No separate item appeared in the contract as the time price differential, and the said differential included in the total time price was not translated into percentage calculations based upon the unpaid cash balance.

[fol. 74] 28

The amount of the finance company's discount for purchasing a retail instalment sale contract varies in accordance with the character and type of the merchandise covered by the contract, and in accordance with other variable factors, such as the credit risk or loss hazard involved and the cost of collection; and similarly, the retail seller's time price varies, depending upon these variable factors. If it is new merchandise, such amounts are less, because the depreciation factor, if a sufficient down payment has been obtained, does not require as high a time price or discount for purchasing the contract. If the merchandise is used, the depreciation factor must be dealt with otherwise, and the amounts are relatively higher, and, likewise, if the credit risk or loss hazard is greater or the contemplated collection costs higher. The variation of said amounts for twenty companies in Indiana on the identical unpaid balance of three hundred dollars ($300.00) on the purchase on instalments of a new automobile ranged from $28.00 to $60.00 for one year. These amounts in terms of interest based upon the diminishing unpaid balance ranged from 18.7% to 44.4% per annum. On used automobiles for the same unpaid balance for the same period of time the amounts ranged from $35.00 to $85.20, and these amounts, in terms of interest similarly computed, ranged from 23.9% to 69% per annum. In the purchase of furniture generally these amounts on the average are higher. In the case of the purchase of radios, these amounts are higher than in the case of either of the other two commodities mentioned. In the case of the purchase of automobile tires, these [fol. 75] amounts are in a still higher range. The range,

expressed in terms of interest computed on the diminishing unpaid balance, is from 33.6% to 106.1% per annum.

The above amounts, as to both new and used automobiles, included the cost of insurance for the retail buyer. The types of insurance coverage, the cost of which was included in these various amounts, is not disclosed by the evidence, nor the amount of the coverage. Insurance costs vary in amount according to types of coverage, make of car, zone in which kept and amount for which insured, and this variable factor and the other variable factors mentioned above account for part of the variation in amounts, the extent of which can not be determined from the evidence.

The evidence does not disclose whether insurance for the retail buyer was included in the amounts mentioned above in terms of interest for the purchase of furniture, radios and for automobile tires. Instalment sales of automobile accessories, in which classification tires are included, amount to less than ½ of 1% of the total instalment sales in Indiana; instalment sales of radios, together with instalment sales of electric goods and refrigerators, amount to about 6½% of all instalment sales in Indiana, and instalment sales of furniture stores to approximately 13% thereof.

For a transaction in Indianapolis, Indiana, by a GMAC dealer, involving the sale of a new Chevrolet passenger car on instalments under a conditional sale contract, the amount of which contract was payable in twelve equal monthly instalments, and which contract GMAC purchased, the cash [fol. 76] delivered price of the car was $720.00. The down payment by the purchaser was $240.00, the cash balance remaining after giving effect to the down payment was $480.00, and the amount of the conditional sale contract signed by the purchaser (cash balance of $480.00 plus differential of $66.48) was $546.48. After deducting from the differential of $66.48 the manual cost of fire, theft, accidental physical damage and $25.00 deductible collision insurance amounting to $34.08, and after deducting the amount of the dealer's reserve of $7.57, the remainder of said $66.48, amounting to $24.83, in terms of interest, based on the diminishing balance of $546.48, amounted to 8.39 percent per annum.

For a transaction in Indianapolis, Indiana, by a GMAC dealer, involving the sale of a used Chevrolet passenger car on instalments under a conditional sale contract, the

amount of which contract was payable in twelve equal monthly instalments, and which contract GMAC purchased, the cash delivered price of the car was $500.00. The down payment by the purchaser was $170.00, the cash balance remaining after giving effect to the down payment was $330.00, and the amount of the conditional sale contract signed by the purchaser (cash balance of $330.00 plus differential of $60.96) was $390.96. After deducting from the differential of $60.96 the manual cost of fire, theft, accidental physical damage and $25.00 deductible collision insurance amounting to $29.08, and after deducting the amount of the dealer's reserve of $10.77, the remainder of said $60.96, amounting to $21.11, in terms of interest, based on the diminishing balance of $390.96, amounted to 9.97% per annum.

The time price differential in each of the above cases is the actual amount shown in the GMAC charts for new passenger cars and used passenger cars, respectively, currently [fol. 77] furnished to dealers in Chevrolet automobiles in the Indianapolis territory.

There are variations in the GMAC's payment charts, depending upon the make of car and the insurance zone in which the car is to be kept, but the foregoing illustrations are typical of the time price differentials which are generally made use of by retail sellers in arriving at the time prices at which they sell at retail new and used automobiles manufactured by General Motors Corporation or its divisions.

29

None of the factors other than insurance which are used by the finance companies to make up the differential or discount, and none of the factors which are used by retail sellers in making up the finance charge, are available to the State of Indiana or to the retail buyer for scrutiny. Neither the cost of capital, the cost of investigation, the cost of bookkeeping and other overhead expense, the cost of collection, the loss hazard, the depreciation factor, nor any other element which is a factor considered in making up the differential or discount and in making up the finance charge, is available.

30

The Department of Financial Institutions in its report to the Governor and the General Assembly, recommended that

the cost of the credit extension, as the term is used in its report, be separated from the cost of insurance and expressed in terms of a rate per cent per month based upon [fol. 78] the diminishing unpaid balance of the price of the merchandise. This recommendation was made to give the retail buyer a comparative cost basis.

The finance companies had conducted their business of buying instalment contracts upon the basis of a flat charge by way of what was called discount.

31

The dealer's reserve is an allowance out of the differential or discount and is usually a certain percentage allowed the dealer on retail instalment contracts assigned by him. The reserve is contracted for between the dealer and the finance company, either by general blanket agreement or by agreement made at the time of the assignment of the particular contract. The theory underlying reserves is that there must be compensation for the loss hazard. The difference in loss hazard between new and used merchandise accounts for the larger reserve paid on transactions involving old merchandise.

32

The "rebate" is a name given to a practice engaged in by some finance companies, whereunder the finance company, by special agreement with the retail seller, furnishes him or it with its regularly authorized finance charges as printed on its rate or payment chart, but agrees to and pays the retail seller a certain amount in cash on each contract accepted by the finance company. The rebate is distinguished from the payment of a reserve out of an accumulated fund by a "with recourse" or "with repurchase" [fol. 79] company and from like payment of a bonus by "without recourse" companies and is paid and goes to the retail seller without any restrictions whatsoever. The evidence does not disclose the amounts paid as rebates.

33

To the extent that it exists at all, the "dealer's pack" exists only in the case of the instalment sale of automobiles. Automobile instalment sales in Indiana constitute more

than 60% of all retail instalment sales. The "dealer's pack" does not exist in connection with the sale of those commodities, the sales of which constitute 40% of total retail instalment sales. The "dealer's pack" is an expression used to identify the amount which some retail sellers may feel justified in including in the time price to the retail buyer over and above the sum total of the "discount" which the finance company will receive after purchase of the contract plus the amount necessary to protect the retail seller on account of the recourse, if any, to which he is subject.

The practice is for the dealer to add to the finance charge an additional amount known as pack. The retail buyer is not informed as to what this item is, and may be led to believe that the whole amount added to the unpaid balance, including the pack, is retained by the finance company. In practice the finance company collects but does not retain the pack. The dealer collects the amount from the finance company at the time of the sale of the contract, or, in some instances, after the contract has been fully paid, the amount is credited to the reserve account of the dealer with the finance company. The common range of packs is from $10 [fol. 80] to $25, although in some instances it may reach $40 or more.

34

Whether the retail seller marks his cash price low and justifies his time price by the amount of the so-called finance charge which has been made larger by the amount of the "dealer's pack", or whether he marks his car with a high cash price and makes the so-called finance charge low, the result is the same; the total time price which must be obtained from the retail buyer for the car is the same in both cases and the "dealer's pack" represents only a difference in the retail seller's selling policies.

Any rebate or bonus paid to the dealer likewise increases the time price to the buyer.

35

Forms of contracts supplied to retail sellers by finance companies generally contain no provision for a return of any part of the finance charge or time price differential to the buyer in the event he wishes to prepay the contract. In the event of prepayment the finance company, in those instances where there is a pack or rebate, must, if it has

already paid the amount of the pack or rebate to the dealer, collect the amount from the buyer to reimburse itself.

36

In the contracts supplied by finance companies to retail sellers, provision for the collection of interest on overdue instalments at the highest legal contract rate is frequently made. Some finance companies make charges against [fol. 81] and collect from the retail buyer amounts on account of letters sent or acts done by the finance company in connection with the collection of instalments that are delinquent. A delinquency charge is a necessary one.

The report of The Department of Financial Institutions entitled "Indiana Consumer Finance Agencies", did not deal with the subject of delinquencies for the reason that the recommendation of the Division of Research and Statistics was that the amount permitted as a finance charge be a rate per cent per month on the unpaid declining cash balance.

Some finance companies assess the purchaser as a delinquency charge a small fee which is a lump sum provided by its rules of collection known as reinstatement fee. This fee is collected before the account which has become past due is again put in good standing.

In connection with the delinquent charges some companies also have transfer fees which are charged against the person who purchases an automobile from a conditional vendee whose contract has been assigned to the finance company, and which purchaser desires to continue to make the payments according to the provisions of the original conditional vendee's contract. The finance company justifies this charge on the ground that additional bookkeeping is entailed in transferring the account.

The collection of delinquency charges, reinstatement fees and transfer fees is sometimes enforced against the purchaser by means of refusing to deliver to him the certificate of title issued by the State of Indiana. When the automobile is sold on instalments and by means of the conditional [fol. 82] sale agreement, the title to the automobile is retained by the vendor and subsequently assigned to the finance company.

37

During all times herein mentioned some finance companies operating on a without recourse basis have paid a bonus to dealers, even though the dealer has no liability on the contract assigned to the finance company. During the same time G. M. A. C. has continued to set aside the reserve amount thereof to complainant and other dealers from time to time.

38

G. M. A. C. and other factory affiliated finance companies purchase together more than 60% of all of the instalment contracts arising out of retail automobile instalment sales in the State of Indiana.

39

The purchase of an automobile or other desired merchandise on time is the gratification of the buyer's preference for the present use and enjoyment thereof which is made available to him by the method of instalment purchase, as against deferring present use and enjoyment until he has accumulated sufficient funds to make a cash purchase, and, except for the down payment, as against paying out of accumulated capital, as for example, balances in commercial or savings banks. In order that the retail buyer may purchase the merchandise on time, his ability to make the necessary down payment and to pay the instalments of the [fol. 83] time price must be demonstrated and established to the satisfaction of complainant.

40

There are 843,066 families in the State of Indiana. Out of this number there are 700,000 families whose yearly income is less than $2400 each. There are 400,000 families whose yearly income is less than $1,000 each. The latter class of families constitute the largest class of purchasers of merchandise who use credit provided by means of retail instalment sales and contracts.

41

Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana became ef-

fective on July 1, 1935, and the defendants will in so far as required by said act, in their respective capacities, enforce the act in all of its provisions unless restrained by the court.

42

The business of retail sales of automobiles in which the retail seller is engaged, as well as the business of retail sales of other goods having standard prices, is a highly competitive one, in which the amount of the time price as well as the cash price to retail buyers constitutes a material and important competitive factor. The importance of this factor is emphasized by the interest which the manufacturers of automobiles and other standard articles have in maintaining, for competitive reasons, the retail prices, as well as the cash prices of their products, as low as possible. Other finance companies compete with G. M. A. C. and other factory-owned and factory-affiliated companies, [fol. 84] and commercial banks, small loan companies and industrial banks also compete in this field.

[fol. 85] Conclusions of Law

Upon the foregoing facts the court states its conclusions of law as follows:

1. That Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana is unconstitutional and void in that it deprives complainant of its property without due process of law.

2. That plaintiff is entitled to a judgment perpetually enjoining and restraining the defendants and each of them and their respective agents and employees from in any manner enforcing or threatening to enforce against complainant the provisions of said act.

George T. Page, U. S. Circuit Judge. Patrick T. Stone, U. S. District Judge. Thos. W. Slick, U. S. District Judge.

[fols. 86 & 87] IN UNITED STATES DISTRICT COURT

FINAL DECREE—October 2, 1935

And now upon the foregoing findings of fact and conclusions of law, it is

Ordered, Adjudged and Decreed that defendants and each of them and their assistants, deputies, agents and employees be forever enjoined and restrained from enforcing or attempting to enforce against complainant any of the provisions of the Act of the General Assembly of the State of Indiana entitled "An Act to license and regulate and to promote competition in the business of purchasing contracts arising out of retail installment sales, to prescribe the form of such contracts, to empower the department of financial institutions to classify retail installment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail installment sales." being Chapter 231 of the Acts of the General Assembly of the State of Indiana at the 79th Regular Session, and from exacting or attempting to exact from complainant any of the penalties which said Act purports to prescribe for violations thereof, and from instituting any proceedings against complainant to enforce or exact any of such penalties.

[fol. 88] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed Dec. 23, 1935

PETITION FOR APPEAL

Considering themselves aggrieved by the decision of the District Court of the United States for the Southern District of Indiana (Indianapolis Division) in cause number 1685 in equity in said Court, wherein McHenry Chevrolet Co., Inc., is the complainant, and Paul V. McNutt, Governor of the State of Indiana, Phillip Lutz, Attorney General of

[fol. 89] Indiana, Richard A. McKinley, Director of the Department of Financial Institutions of the State of Indiana, Oscar P. Welborn, Harvey B. Hartsock, C. M. Setser, Myron Gray and Robert Batton, Members of the Commission of Financial Institutions of the State of Indiana and Herbert M. Spencer, Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana, are defendants, the said defendants therein hereby pray that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

And the said defendants (appellants) assign the following errors in the record and proceedings in said case:

1. The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its first conclusion of law in said case in holding and deciding that Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana is unconstitutional and void in that it deprives complainant of its property without due process of law.

2. The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its second conclusion of law in said case in holding and deciding that the complainant is entitled to a judgment perpetually enjoining and restraining the defendants and each of them and their respective agents and employes from in any manner enforcing or threatening to enforce against the com- [fol. 90] plainant the provisions of Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana.

3. The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its decree in granting and issuing the injunction herein.

4. The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in failing to find as a fact and in disregarding the same in its conclusions of law and decree that the business whose regulation is provided for by Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana is designed for use by and is used by a considerable

portion of the people of the State in the financing of retail instalment purchases; that such business and the methods of transacting the same operate to the detriment of the retail instalment buyer who pays the cost of the supplying of capital by the finance companies to the retail dealers but who, instead of deriving benefit from the competition between finance companies for the retail dealers' business, are placed at a disadvantage by the concealment of "packs" and "bonuses" as a part of the finance charge and by other methods shown by the evidence; and that by reason thereof said business directly affects the public welfare and is subject to regulation under the police power.

PRAYER FOR REVERSAL

For which errors the defendants (appellants) pray that the said decree of the District Court of the United States [fols. 91–125] for the Southern District of Indiana (Indianapolis Division) dated October 2, 1935, in the above entitled cause be reversed and a judgment rendered in favor of the said defendants and for costs.

Philip Lutz, Jr., Attorney General; Joseph W. Hutchinson, Assistant Attorney General; —— ——, Assistant Attorney General; Leo M. Gardner, Counsel for Appellants.

[fol. 126] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL, FIXING APPEAL BOND, ETC.—December 23, 1935

The appellants (defendants) in the above entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled suit by the District Court of the United States for the Southern District of Indiana (Indianapolis Division) on the 2nd day of October, 1935, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors, and prayer for reversal, and having presented a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdic-

tion upon appeal to review the decree in question, all pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the District Court of the United States for the Southern District of Indiana (Indianapolis Division) in this cause, as provided by law, and it is further ordered that the Clerk of the Court appealed from shall prepare and certify a transcript of the record, proceedings, and decree in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $1,000.00.

And the defendants file appeal bond in the sum of One Thousand Dollars ($1,000.00) with National Surety Corporation as surety thereon, which bond is approved by the Court and is as follows:

[fols. 127-131] Bond on appeal for $1,000.00 omitted in printing.

[fols. 132-138] Citation, in usual form, showing service on Paul Y. Davis et al., filed Dec. 26, 1935, omitted in printing.

[fol. 139] ENTRY FOR DECEMBER 26, 1935

Also lodge condensed statement of evidence.

Also file præcipe for record, which is as follows:

[fol. 140] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Dec. 26, 1935

You are hereby requested to make and transmit to the Supreme Court of the United States under your hand and the seal of the District Court a true copy of the material

parts of the record in the above entitled cause, including therein the following:

1. The Bill of Complaint.
2. The Answer.
3. All rulings of the Court and exceptions thereto and all order book entries in said cause.

[fol. 141] 4. The findings of fact and conclusions of law.

5. The final decree.

6. (a) The petition for appeal, assignment of errors and prayer for reversal;

(b) The order of the Court allowing the appeal;

(c) The typewritten statement particularly disclosing the basis upon which it is contended the Supreme Court has jurisdiction;

(d) The statement directing the attention of appellee to the provisions of paragraph 3 of Rule 12 of the Supreme Court;

(e) The proof of service on appellee of the foregoing papers indicated by 6(a) to (d) inclusive.

7. The appeal bond and the approval thereof.

8. The condensed statement of the evidence, and attach to such transcript the original Citation with proof of service thereof, and a copy of this præcipe.

Philip Lutz, Jr., Attorney General; Joseph W. Hutchinson, Assistant Attorney General; Leo M. Gardner, Counsel for Appellants.

[fols. 142 & 143] The undersigned hereby acknowledge service of a copy of the foregoing præcipe this 24 day of December, 1935.

McHenry Chevrolet Co., Inc., by Smith, Remster, Hombrook, Smith, by Paul Y. Davis, Attorneys for Appellee.

[fol. 144] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION CONCERNING CONDENSED STATEMENT OF THE EVIDENCE—Filed Jan. 8, 1936

It is stipulated between appellants and appellee (plaintiff and defendants) in the above cause that for the pur-

pose of appellants' appeal from the final decree therein rendered, the special finding of facts made by the United States District Court for the Southern District of Indiana may be treated as supported by the evidence with the exception of the following statements in said findings as to which there is controversy between the parties, namely:

Finding Number 40.

There are 843,066 families in the State of Indiana. Out of this number there are 700,000 families whose yearly income is less than $2400 each. There are 400,000 families whose yearly income is less than $1,000 each. The latter [fol. 145] class of families constitute the largest class of purchasers of merchandise who use credit provided by means of retail instalment sales and contracts.

It is further stipulated that the evidence relevant to the controverted finding above set out was in substance the following:

Edward E. Edwards in affidavits submitted in this cause, deposed as follows:

I am now an employee in the Division of Research and Statistics of the Department of Financial Institutions of the State of Indiana (hereinafter called the Department) and have been since the said Department came into existence on July 1, 1933. I have recently been appointed supervisor of such division beginning July 1, 1935. I am a graduate of Indiana University, obtaining the degree Bachelor of Science in 1928 and the degree Master of Science in 1934. In addition to the experience and education set out above I have had several years business experience, including three years in the organization of the Comptroller of Manufacture of Western Electric Company, Chicago, Illinois, and one year in the general office of Trustees System Service, Chicago, Illinois, a corporation engaged in the extension of consumer credit.

As a part of my duties in the Division of Research and Statistics of the said Department, I conducted a study of the consumer credit agencies of the State of Indiana, under the supervision of Mr. H. B. Wells. Since the completion of this report I have been further engaged in assisting with the drafting of the Act herein attacked and conferring with [fol. 146] the representatives of the finance business and with dealers and merchants affected by said Act, for the purpose of drafting fair and workable regulations which

might be promulgated for the Commission for Financial Institutions.

Installment buying is a device which makes possible the purchase of consumption goods of a market value which prevents their purchase out of current income or accumulated savings. Naturally, installment buying is the means of purchase resorted to by persons or families who have a limited income and from which little savings may be made. According to the 1930 census, there were 843,066 families in Indiana. Based on federal income tax returns and on a house to house study of home ownership in the City of Indianapolis, I estimate that at least 700,000 of these families have an annual income of less than $2400 and that 400,000 of these families have an annual income of less than $1000. Since the average family in Indiana, based on 1930 census figures, contained 4 persons approximately, it is readily apparent that most of the families in the above income groups could not purchase commodities normally sold on the installment plan, including furniture, stoves, electrical appliances, such as washing machines and vacuum cleaners, radios, automobiles and jewelry, out of accumulated savings but are, by necessity, forced to accept installment credit. Clearly, the buyers of the above classes have little bargaining power which may be used to combat the combination of the dealer and finance company in the practices of which he is the victim. The regulation of installment credit by the State offers an intermediate power to [fol. 147] assist the buyer in the purchase of his commodities on a reasonable basis of cost for the credit extension involved and immediately affects the general prosperity of all persons and families who constitute the income classes above set out.

Milan V. Ayres in affidavits submitted in this cause, deposed as follows:

I reside at 5527 University Avenue, Chicago. I hold the office of Secretary and Analyst of the National Association of Sales Finance Companies, a voluntary association organized in 1924 and now having as members 219 sales finance companies located in all parts of the United States, besides seven members in Canada. I have held the position of analyst for the association for nine years, during all of which time my duties have included the gathering and study

of statistics and general information relating to instalment selling and the financing of instalment sales.

It is stated by Mr. Edward E. Edwards that according to the 1930 census there were 843,066 families in Indiana, of which Mr. Edwards estimates that at least 700,000, or about 85 per cent. have incomes of less than $2,400 per year and 400,000, or about 47 per cent. have annual incomes of less than $1,000. These figures are used to support the contention that a very large proportion of the population are "by necessity forced to accept instalment credit" and "have little bargaining power", and that therefore the Retail Instalment Sales Act is legislation for the general welfare.

The fallacy in defendants' contention lies in the assumption that instalment buying is typically the recourse of the poor. As a matter of fact instalment purchasing is done [fol. 148] chiefly by fairly prosperous people, and hardly at all by those families having incomes of less than $1,000 annually—which Mr. Edwards characterizes as having "little bargaining power". Incidentally, of the 400,000 families which Mr. Edwards estimates have an annual income of less than $1,000, probably more than one-fourth were on relief (the monthly report of the Federal Emergency Relief Administration dated from March 1, 1935 through March 31, 1935 showed that 114,000 families in Indiana were on relief and in addition 22,000 individuals.)

Families having a total annual income of less than $1,000 and of course families on relief, are obliged to spend practically their entire income for the primary necessities—which are of course food, fuel, clothing and shelter. Food, fuel and shelter are not sold on the instalment plan, and only a very small percentage of clothing is so sold. The best available data indicate that in 1929 only 3.2 per cent. of the retail sales of clothing stores in Indiana were made on the instalment plan and none of the sales of shoe stores. Undoubtedly the great bulk of the instalment clothing sales consisted of the more costly items, such as fur coats, dress suits and the like, which were not purchased by poor families.

The families which purchase instalment goods have been almost exclusively those which have a fairly assured income over and above that requisite for purchasing the primary necessities. The poor have not been the buyers of such goods because they could not be, and because, while often very desirable, such goods are not essential to sustain life [fol. 149] in health and comfort.

The purchasers of instalment goods cannot be deemed to be under any necessity of buying. They can do so or not as they see fit. They need not buy at once, but can wait as long as they choose. They can go from one merchant to another, seeking the best price, or they can borrow in order to buy. The statement that such people have "little bargaining power" or fail to exercise it is contrary to the fact.

Summarizing the above: it is those families having annual incomes over $1,000 (the remaining 53%, using Mr. Edwards' purely estimated figures) which are principally affected by the Retail Instalment Sales Act; these families have no lack of "bargaining power"; the Act does not affect at all the sales of the primary necessities, because such sales are not made on instalments; and it cannot affect to any determinable degree, however slight, the necessitous, the poor, the people of "little bargaining power", because such people seldom buy anything on instalments.

It is further stipulated that the foregoing evidence, together with the special findings of fact made by the United States District Court for the Southern District of Indiana, constituted all of the evidence and facts necessary to the consideration of the questions presented by appellants' assignment of errors herein and that this stipulation shall be included in the transcript of the record on appeal from the final decree in this cause in lieu of the condensed statement of the evidence required by Equity Rule 75.

Philip Lutz, Jr., Attorney General; Joseph W. Hutchinson, Assistant Attorney General; Leo M. Gardner, Solicitors for Appellants. Smith, Remster, Hombook, Smith, by Paul Y. Davis, Solicitors for Appellee.

[fol. 150] Approved by the court this 7th day of January, 1936, and ordered filed as a part of the record in this cuase.

George T. Page, Judge of United States Circuit Court of Appeals, Seventh Circuit; Patrick T. Stone, Judge of the District Court of the United States for the Western District of Wisconsin; Thos. W. Slick, Judge of the District Court of the United States for the Northern District of Indiana, Sitting in said cause in the Southern District of Indiana (Indianapolis Division) as a special Statutory Three Judge Court.

[fol. 151] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 152] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Jan. 21, 1936

The appellants in the above entitled cause say that the points which they intend to rely upon in this court in this case are as follows:

I

The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its first [fol. 153] conclusion of law in said case in holding and deciding that Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana is unconstitutional and void in that it deprives complainant (appellee herein) of its property without due process of law.

1. The findings of fact show that the business regulated by said Act is a proper subject of regulation by the State in the exercise of its police power.

2. The findings of fact fail to show that any of the provisions of said Act are in excess of what is reasonably required for the public welfare.

3. The findings of fact show that the provisions of the Act are reasonably necessary for the public welfare.

4. The Act does not regulate the price of the sale of merchandise. The price regulation features of the Act extend only to the "finance charge" and is a regulation of "credit costs" as distinguished from "price of merchandise".

5. The commission charged with the duty and authority of regulation under said Act is limited by the Act in the fixing of rates, and for any unwarranted action by it of whatever character the Act specifically provides for a resort to the courts.

6. The Act under the evidence and the findings of fact is a legitimate exercise of the police power and is not a

deprivation of due process of law or of equal protection of the laws.

7. The public policy involved is peculiarly for the legislature and not for the court.

II

The District Court of the United States for the Southern [fol. 154] District of Indiana (Indianapolis Division) erred in its second conclusion of law in said case in holding and deciding that the complainant (appellee herein) is entitled to a judgment perpetually enjoining and restraining the defendants (appellants herein) and each of them and their respective agents and employes from in any manner enforcing or threatening to enforce against the complainant (appellee herein) the provisions of Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana. The specific points relied upon in support of the foregoing Error No. II are the same as those stated under Error No. I.

III

The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its decree in granting and issuing the injunction. The specific points relied upon in support of the foregoing error No. III are the same as those stated under Error No. I with the following additional point, namely:

1. The evidence shows that the business of financing retail instalment purchases which is regulated by the Act in controversy affects a considerable portion of the people of the State and that the methods employed and sought to be regulated by the Act operate to the detriment of the retail instalment buyer who pays the cost of the supplying of capital by the finance companies to the retail dealer, but who instead of deriving benefit from competition between finance companies for the retail dealer's business, are placed at a disadvantage by the concealment of "packs" and bonuses as a part of the finance charge and by other methods and that by reason thereof said business directly affects the public welfare and is subject to regulation under the police power.

[fol. 155] IV

The decree of the District Court enjoins the enforcement of the Act as an entirety.

1. This was clearly error. The enforcement of sections 1 to 5 inclusive; sections 21 to 24 inclusive; section 28; a part of section 29; and sections 30 to 35 inclusive would not deprive the appellee of its property without due process of law. The enforcement of the above sections apart from the provisions designed to regulate the cost of credit is clearly intended by the legislature, and the failure, if the court shall so hold, of the sections designed to regulate the cost of credit does not impair the efficacy of the remainder of the Act.

The Parts of the Record to be Printed

Appellants state that the entire record as filed is necessary for the consideration of the case and needs to be printed by the clerk for the hearing of the case.

Philip Lutz, Jr., Attorney General; Joseph W. Hutchinson, Assistant Attorney General, Counsel for Appellants.

[fol. 156] Proof of Service

The undersigned hereby acknowledges service of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed this 20th day of January, 1936.

Smith, Remster, Hombook, Smith, by Paul Y. Davis, Counsel for Appellee.

[fol. 157] [File endorsement omitted.]

Endorsed on cover: File No. 40,264. S. Indiana, D. C. U. S. Term No. 710. Paul V. McNutt, Governor of the State of Indiana, et al., appellants, vs. McHenry Chevrolet Co., Inc. Filed January 21, 1936. Term No. 710, O. T., 1935.

FILE COPY

Office Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 710

PAUL V. McNUTT, GOVERNOR OF THE STATE OF INDIANA, ET AL.,

Appellants,

vs.

McHENRY CHEVROLET CO., INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

STATEMENT AS TO JURISDICTION.

PHILIP LUTZ, JR.,
Attorney General of Indiana,
JOSEPH W. HUTCHINSON,
Assistant Attorney General of Indiana,
LEO M. GARDNER,
Counsel for Appellants.

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IN THE

DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

PAUL V. McNUTT, GOVERNOR OF THE STATE OF INDIANA; PHILIP LUTZ, ATTORNEY GENERAL OF INDIANA; RICHARD A. McKINLEY, DIRECTOR OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS OF THE STATE OF INDIANA; OSCAR P. WELBORN, HARVEY B. HARTSOCK, C. M. SETSER, MYRON GRAY AND ROBERT BATTON, MEMBERS OF THE COMMISSION OF FINANCIAL INSTITUTIONS OF THE STATE OF INDIANA; HERBERT M. SPENCER, PROSECUTING ATTORNEY OF THE NINETEENTH JUDICIAL CIRCUIT OF THE STATE OF INDIANA,

Appellants (Defendants),

vs.

McHENRY CHEVROLET CO., INC.,

Appellee (Complainant).

JURISDICTIONAL STATEMENT.

The above named appellants (defendants) having presented to the United States District Court in and for the Southern District of Indiana, Indianapolis Division, their petition for the allowance of an appeal to the Supreme Court of the United States from the decree of said Court

entered on October 2, 1935, in cause number 1685 in equity, wherein the appellee above named is complainant and the appellants above named are defendants, now concurrently with the presentation of said petition herewith present and file their separate typewritten statement particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question, as follows:

A.

The Statutory Provisions Believed to Sustain the Jurisdiction.

The statutory provisions believed to sustain the jurisdiction are—

Section 266 of the Judicial Code, as amended on February 13, 1925 (43 U. S. Statutes at Large 938);

Title 28, U. S. C. A., Sec. 380;

Section 238 of the Judicial Code, as amended on February 13, 1925 (43 U. S. Statutes at Large 938);

Title 28, U. S. C. A. (Pocket Supplement), Sec. 345.

B.

The Statute of the State the Validity of Which is Involved.

The statute of the State the validity of which is involved may be found in the Acts of the 79th Regular Session of the General Assembly of Indiana (Acts of 1935 of the General Assembly of Indiana) beginning on page 1206 and is as follows:

CHAPTER 231.

(H. 377. Approved March 11, 1935.)

AN ACT to license and regulate and to promote competition in the business of purchasing contracts arising out of retail installment sales, to prescribe the form of such con-

tracts, to empower the department of financial institutions to classify retail installment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail installment sales.

SECTION 1. Definition of Terms.—*Be it enacted by the general assembly of the State of Indiana,* That in this act, unless the context or subject matter otherwise requires:

The term "retail installment sale," or the plural thereof, means and includes every retail contract to sell specific goods and every retail sale of specific goods to any person:

(a) In which the cash price of the goods is not in excess of $1,500, and may be paid in installments over a period of time, and,

(b) In which the seller has taken or retained a security interest in the goods.

The term "person" includes a corporation or partnership or (of) two or more persons having a joint or common interest.

The term "goods" includes all chattels personal other than money, things in action, emblements, industrial growing crops, things so affixed to the land as to become a part thereof, or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The term "specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

The term "retail" means to dispose of specific goods to, or to acquire specific goods by, a person who may consume such goods for his personal use.

The term "buyer" means a person who buys or agrees to buy goods, or any legal successor in interest of such person.

The term "retail buyer" means a buyer who is a party to

a retail installment sale, or any legal successor in interest of such person, and includes any person who as surety, indorser or guarantor or otherwise is liable on the obligation created by any retail buyer on any retail installment contract.

The term "seller" means a person who sells or agrees to sell goods.

The term "retail seller" means a seller who is a party to a retail installment sale.

The term "cash price" means the price, measured in dollars, agreed upon in good faith by the parties for the specific goods which are the subject matter of any retail installment sale.

The term "retail installment contract" means any written instrument, lawful under this act, which is executed in connection with any retail installment sale and is required by section 2 hereof or is authorized by section 3 hereof, and the term may include all such instruments executed in connection with any retail installment sale.

The terms "contract to sell," "sale" and "conditional sale" shall have the same meaning in this act as they are respectively defined in the Uniform Sales Act and Uniform Conditional Sales Act.

The term "conditional sales contract" means any written instrument evidencing a conditional sale.

The term "bank or trust company" means any national banking association formed under the laws of the United States with its principal office located in this state and doing business herein and any bank or trust company, any bank of discount and deposit, loan and trust and safe deposit company or trust company organized and doing business under the provisions of any law of this state.

The term "department" means "The Department of Financial Institutions."

The term "manufacturer" means a person who is engaged, directly or indirectly, in the manufacture or distribution of specific goods which may become the subject matter of a retail installment sale in this state.

The term "finance charge" means any consideration which the retail buyer contracts to pay the retail seller for the privilege of paying the principal balance in installments over a period of time.

The term "security interest" means a property interest in goods which are the subject matter of a retail installment sale, limited in extent to securing performance of some obligation of the retail buyer or of some third person to the retail seller and includes the interest of a mortgagee of the goods and the title to the goods whether or not expressed to be absolute, whenever such title is, in substance, retained for security only.

SEC. 2. Written Instrument.—Every retail installment sale shall be evidenced by an instrument in writing signed by the retail buyer, and a copy thereof shall be delivered to him by the retail seller at the time of its execution. An acknowledgment of the delivery thereof contained in the body of the instrument shall be conclusive proof of delivery in any action to enforce any obligation arising out of the retail installment sale. The written instrument shall contain all of the agreements of the parties made with reference to the specific goods which are the subject matter of the retail installment sale, and shall set forth specifically all items and matters required by this act. The reference to insurance shall recite generally the type or types of insurance the retail seller has agreed to procure for the retail buyer but such reference to insurance shall not be construed to imply the scope of the coverage, the terms, exceptions, limitations, restrictions or conditions of the contract or contracts of insurance to be furnished. Nothing in this act shall be con-

strued to require the retail seller to comply with the provisions hereof at any time prior to the delivery of the specific goods to the retail buyer.

SEC. 3. Retail Installment Contracts.—Any retail seller may require any retail buyer to execute and deliver a promissory note to evidence the indebtedness created by any retail installment sale, and, to secure the payment of the indebtedness created by the sale or evidenced by the promissory note or to secure the performance of any other condition of the sale, may require the retail buyer to execute and deliver a conditional sale contract, chattel mortgage or other instrument to give the retail seller a security interest in the specific goods which were the subject matter of the retail installment sale. A written instrument required by section 2 hereof may evidence a conditional sale.

SEC. 4. Provisions of Written Instruments.—Every written instrument evidencing a retail installment sale shall recite the following separate items as such and in the following order:

(1) The cash price of the specific goods.

(2) The amount in cash of the retail buyer's down payment, whether made in money or goods or partly in money or partly in goods.

The term "down payment" for the purpose of this section, shall mean that part payment of the cash price required by the retail seller as a condition to the delivery of the specific goods sold or to be sold or to the extension of credit to the retail buyer for any portion of the cash price.

(3) The unpaid balance of the cash price payable by the retail buyer to the retail seller which is the difference between items (1) and (2).

(4) The cost to the retail buyer of any insurance the retail buyer has agreed to procure, if the retail seller has agreed to purchase the insurance and extend credit to the retail buyer for the price thereof.

(5) The principal balance owed on the retail installment contract which is the sum total of items (3) and (4).

(6) The amount of the finance charge.

(7) The time balance owed by the retail buyer to the retail seller and the number of installment payments required and the amount and date of each payment necessary finally to pay the time balance which is the sum total of items (5) and (6).

Item (4) and item (6) may be added together and stated as one sum in the written instrument and if so stated item (5) may be omitted, but in such event the retail seller shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract a statement reciting the separate amounts of items (4) and (6).

SEC. 5. The Insurance.—Any retail seller who, in any retail installment contract, has agreed to purchase insurance for the retail buyer and to extend credit for the price thereof, shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract, a policy or policies of insurance or in lieu thereof a certificate briefly describing the protection afforded by the insurance procured, and the kind and amount thereof. If the premium for insurance of like kind and amount, as fixed in the published manual of a recognized standard rating bureau designated by the retail seller, is less than the amount charged the retail buyer as fixed in the written

instrument in compliance with item (4) of section 4 hereof, the retail buyer may deduct an amount equal to the difference from the amount of the last payment owed the retail seller. If, before the sale, assignment or transfer of the retail installment contract, the retail seller has not purchased the insurance for the retail buyer which the former, under the terms of the retail installment contract, is required to purchase, any licensee hereunder who becomes the owner, assignee or transferree of the retail installment contract shall, within twenty-five days after the execution of the assignment, purchase the insurance and mail the policies or certificates, instead of the retail seller as required above, and may, subject to the provisions of this section, collect and receive the amount of the cost thereof which was included as a part of the principal balance on the retail installment contract.

SEC. 6. The Finance Charge and Prepayment.—Subject to the provisions of this act, any retail seller at the time of making any retail installment sale may contract for the payment of a finance charge by the retail buyer and collect and receive the same. The finance charge contracted for in any retail installment contract may not exceed the maximum finance charge then authorized by the department as in this act provided. Every retail buyer shall have the right, at any time, to pay the then unpaid time balance owed on any retail installment contract, whether then due or not, and upon payment thereof, any holder of the retail installment contract shall reduce the amount of the then unpaid time balance by the amount fixed and determined in accordance with the regulations of the department in force as of the date of the making of the particular retail installment contract and applicable to such cases. The reduction herein authorized may be known as a discount and every retail buyer, upon full prepayment of any unpaid

time balance owed by him on any retail installment contract, shall receive the discount but only in the amount, at the times and upon the conditions provided herein. The department shall and is hereby authorized to fix and determine the amount of any discount to be given for prepayment as in this section authorized but no such discount shall be for an amount in excess of the amount of the finance charge on any particular retail installment contract.

Every retail seller may, at the time of making any retail installment sale, contract for the payment by the retail buyer of lawful delinquent charges for failure to pay any installment of the time balance on the date specified in the retail installment contract, and any retail seller or any lawful holder of a retail installment contract in which delinquent charges are contracted for may collect and receive the charges lawfully contracted for.

SEC. 7. Limitation on Amount of Debt and Charges.—No retail installment contract authorized by section 3 of this act which is executed in connection with any retail installment sale shall evidence any indebtedness in excess of the time balance fixed, in the written instrument in compliance with item (7) of section 4 of this act, but it may evidence in addition, any agreements of the parties including agreements for the payment of delinquent charges, taxes and fees, including attorney's fees. No retail seller, directly or indirectly, shall contract for or receive from any retail buyer, as consideration for the extension of credit to the retail buyer for the amount of the principal balance, any further or other amount whatsoever for examination, service, brokerage, commission, expense, fee or other thing of value than the finance charge, charges and fees permitted by this act, taxes on account of any retail installment contract or on specific goods sold thereunder and any lawful fees actually paid out by the retail seller to any public

officer for filing or recording or releasing any instrument securing the payment of the obligation owed on any retail installment contract. The lawful fees may be collected when the retail installment contract is made or at any time thereafter, but may not be included in the principal balance fixed in the written instrument in compliance with item (5) of section 4 hereof.

SEC. 8. Limitation on Recovery and Enforcement of Lien. —No retail installment contract which evidences an indebtedness greater than allowed by section 7 hereof and no retail installment contract in connection with which any charge prohibited by this act has been contracted for or received shall be enforceable against any retail buyer for any amount in excess of the principal balance thereof and no security interest created by any such retail installment contract in connection with which an indebtedness is evidenced which is greater than allowed by section 7 hereof or in connection with which any charge prohibited by this act has been contracted for or received shall be enforceable for an amount in excess of the principal balance against any retail buyer in default under the terms of the retail installment contract.

SEC. 9. Limitation on Assignment of Contracts.—Except as in this section otherwise provided, every retail installment contract shall be assignable and the interest therein transferable to any person or persons. No retail seller may sell, assign and transfer any retail installment contract to any person other than a licensee under this act. Any retail installment contract which is or has been owned by a licensee may be enforced and collected by the holder thereof according to its lawful terms.

SEC. 10. Purchase of Retail Installment Contracts.—Any licensee hereunder may purchase any retail installment

contract on such terms and conditions not inconsistent with the provisions of this act, and at such price and upon such terms as to the payment of the price, as may be agreed upon between the licensee and the retail seller. The records of the licensee shall show the price actually paid for retail installment contracts separately assigned to such licensee but retail installment contracts may be assigned in group or in bulk to any licensee as may from time to time be authorized by the department by regulation without disclosing the purchase price of the individual retail installment contracts. The department is authorized to make regulations from time to time concerning the purchase by licensees of retail installment contracts in group or in bulk and any purchase of such retail installment contracts made within the terms of the regulations shall not be construed as an attempt to avoid the operation and effect of this act.

No licensee shall enter into any agreement with any retail seller regarding the purchase of any retail installment contract whereby the retail seller shall receive, directly or indirectly, any benefit from or part of any amount collected or received from any retail buyer, as a finance charge or as the cost of the insurance to the retail buyer, in excess of an amount fixed and determined by the department and no licensee shall directly or indirectly pay any part of the amount collected as a finance charge or retail buyer's cost of insurance to any retail seller on any retail installment contract purchased from him in excess of the amount so fixed; and the department shall fix such maximum amount which may be so paid but without regard to any differentiation as to whether the retail installment contract is sold to the licensee with recourse on the seller in the event of the default of the buyer or without such recourse or under an agreement by which the seller agrees to repurchase the specific goods described in the retail installment contract

if such buyer in such contract defaults and such goods are repossessed.

The provisions of this section shall not apply to any bona fide loan made to any retail seller which the retail seller is under an unqualified duty to repay as such, and which he has secured as to payment, by the sale, assignment, or transfer of retail installment contracts to the lender.

SEC. 11. Licensees.—No person shall purchase retail installment contracts from a retail seller doing business in this state or engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or trust company, make loans to a retail seller doing business in this state on the security of retail installment contracts or engage in the business of making loans to retail sellers in this state on the security of retail installment contracts unless the department has licensed such person to do such business and has issued to the person a written instrument evidencing the license as in this act provided. Any person who desires to purchase retail installment contracts from retail sellers doing business in this state or to engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or a trust company, to make loans to retail sellers doing business in this state on the security of retail installment contracts or to engage in the business of making loans to retail sellers doing business in this state on the security of retail installment contracts, shall file an application for a license on forms prescribed by the department and pay the fees required herein.

SEC. 12. Application for License and Fees.—The application for license shall contain:

(a) the name and address of the principal office of the applicant,

(b) if applicant has one or more branches operating in this state, the place of business of each such branch at the date of the application,

(c) the trade name, if any, under which applicant's business is to be conducted, and if applicant is a co-partnership, the name of every member thereof, and if a corporation, of each officer and director thereof,

(d) the total authorized investment used or to be used in the business in this state and if a corporation, the amount of the capital stock thereof issued and outstanding,

(e) a statement of the total amount of business transacted by it in this state during the fiscal year next preceding the date of the application,

(f) such other information touching the business of the applicant as the department may require.

The department is hereby authorized to prescribe the forms of the application and require such additional information as to it may seem necessary properly to regulate the business of the licensee. The forms prescribed shall require the applicant to agree to give notice to all retail sellers in this state with which it does business, when requested so to do by the department, of any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance charges as provided in section 26 of this act and to keep in this state, subject to examination, adequate records pertaining to the business done in this state.

The application shall be verified by the proper person and every applicant, other than a bank or trust company or an industrial loan and investment company authorized to issue certificates of indebtedness or investment, shall pay the department the sum of one hundred dollars as an annual

license fee at the time of the filing of the application. Any bank or trust company or industrial loan and investment company authorized to issue certificates of indebtedness or investment which shall apply for a license under this act shall pay the department the sum of ten dollars as an annual license fee at the time of filing of the application. If the period for which the license is to run is less than six months (,) one-half of the annual fee shall be charged. On or before the 20th day of June in each year every licensee shall pay the department the annual license fee provided herein for such licensee for the year commencing on the next succeeding July 1 and shall file an application in the form prescribed by the department. All license fees collected by the department shall be paid into the state treasury and become a part of the financial institution's fund and subject to the provisions of law relating thereto.

SEC. 13. Approval or Rejection of Application.—Upon the filing of any application for license and the payment of the license fee required by this act, if the department shall find that the applicant can operate its business economically and efficiently, it shall thereupon issue and deliver a license to the applicant. In considering economic and efficient operation the department shall take into consideration the fact that this act is designed to promote competition between licensees for the benefit of the class of retail buyers within its scope. The license shall authorize the applicant to do the business otherwise prohibited by this act. The license shall remain in full force and effect until it is surrendered, revoked or suspended as in this act provided. If the department shall find that the applicant cannot operate its business economically and efficiently within the scope of this act, it shall not issue a license to the applicant but shall notify the applicant of the denial, and return to the applicant the fee theretofore paid. The

department shall give every applicant a reasonable opportunity to be heard with respect to the application, and shall approve or deny, by written order, every application for license hereunder within thirty days from the hearing thereon.

SEC. 14. Form of License.—The instrument evidencing the license shall be in such form as may be prescribed by the department, and in addition thereto shall contain the following:

(a) the name of the person licensed,

(b) the name of all partners if applicant is a co-partnership,

(c) the principal office of the applicant.

The instrument evidencing the license, or a certified copy thereof provided by the department, shall be kept posted conspicuously in the principal office of applicant and in every branch maintained and operated by applicant in this state.

SEC. 15. Revocation of License.—The department is hereby authorized to revoke or suspend any license issued under this act, if, after hearing, it finds:

(a) that the licensee has refused to permit the department to make any examination authorized hereunder or has failed to pay the cost of any examination made by the department or the annual license fee required hereby or any penalty assessed by the department against the licensee, or

(b) that the licensee has wilfully failed to comply with any rule or regulation of the department lawfully made hereunder, or

(c) that the licensee has wilfully violated any provision of this act, or any rule or regulation of the department lawfully made hereunder, or

(d) that the licensee has wilfully avoided or attempted to avoid the operation or effect of this act by purchasing any retail installment contract or contracts at a less price than the unpaid balance thereon or by entering into any agreement, combination or understanding (,) express or implied (,) with any retail seller the effect of which agreement, combination or understanding may be to avoid or attempt to avoid the operation or effect of this act.

The department shall give any licensee whose license it proposes to revoke ten days' notice in writing of the contemplated action and of the general grounds therefor. Before the license is revoked or suspended, the licensee shall be given reasonable opportunity to be heard. Licensee (license) may be revoked or suspended only by written order. If the department finds that the grounds for revocation or suspension of the license are applicable only to one branch or some branches operated by the licensee, it may revoke or suspend the license as to that branch or those branches only, or it may revoke the right of the licensee to do business as a licensee in this state. No revocation or suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract theretofore made.

SEC. 16. Recourse to Court.—Any person feeling aggrieved with any decision of the department made as in this act provided may commence an action in the circuit or superior court of the county in which the business operated by such person is located against said department as defendant to vacate or set aside any such order or decision of the department upon the grounds that any such regulation, order or decision of the department is insufficient, unreasonable or unlawful, in which action a copy of the complaint shall be served with the summons. The answer of the department to the complaint shall be filed within ten

days after service of summons. All such actions shall have precedence over civil cases not of the same nature pending in any such court and such circuit or superior court shall always be deemed open for the trial thereof and the same shall be tried and determined as other civil actions.

Any such proceeding, action or suit to set aside or vacate any decision or order of the department or to prevent in any way such order or decision from becoming effective shall be commenced and every right of recourse to the courts shall be exercised within thirty days after the entry or rendition of such order or decision and the right to commence any such action, proceeding or suit or to exercise the right of any recourse to the courts shall terminate absolutely at the end of such thirty days after such entry or rendition thereof. Either party to any such action in the circuit or superior court shall have a right of appeal to the supreme court of the State of Indiana as in other civil cases.

SEC. 17. Surrender of License.—Any licensee hereunder may surrender any license theretofore issued to it by the department at any time after ten days' notice to the department in writing stating that the licensee proposes to and does thereby surrender the license as of a certain effective date named. The surrender of a license by a licensee shall not affect the civil or criminal liability or liability for fees or penalties which the licensee may be under by virtue of any act done prior to the surrender of the license.

SEC. 18. Reports of Licensees.—Every licensee hereunder shall annually on or before the 15th day of March file a report with the department giving such relevant information as the department may require concerning the business and operation of the licensee in this state during the preceding calendar year. The report shall be made under oath and in the form prescribed by the department.

SEC. 19. Examination of Licensees.—The department may at any time investigate the business done in this State by any licensee hereunder, and for that purpose examine the books, accounts, records and files used and maintained by such licensees and their agents, brokers or other representatives. The department may also investigate the business of any person who is not a licensee hereunder and who is doing any business or act, the doing of which is prohibited hereby to persons other than licensees or banks or trust companies. For the purpose of discovering violations of this act and procuring information necessary to fix a maximum finance charge applicable to retail installment contracts, the department in making investigations authorized by this section shall have access to all books, accounts, papers, records, files, safes and vaults of any persons being examined, and may require such persons to attend and testify relative to any transactions or business which may come within the scope of this act. In case of the disobedience on the part of any person to comply with any lawful order of the department or any lawful subpœna, or upon the refusal of any witness to appear and testify to any matter regarding which he may be lawfully interrogated, upon petition of the department setting forth the facts, it shall be the duty of the circuit or superior court of the county of which such person is a resident, or the judge thereof in vacation, to compel obedience to the lawful requirements of the subpœna or order and to compel the production of necessary and required books, papers, records, documents and other evidence, and upon the failure, refusal or neglect of any person to comply with the order of the court or the judge thereof, such person shall be punished as for contempt of court.

SEC. 20. Costs of Examination.—The department shall prescribe and fix a schedule of fees, which are hereby im-

posed and shall be charged and collected by the department, for the services rendered and the duties performed by the department, under and by virtue of the provisions of this act in the supervision, regulation and examination of licensees hereunder and the schedule of fees so prescribed and fixed shall be determined in accordance with the provisions of section 35 of the Indiana Financial Institutions Act. For the purposes of this section a licensee hereunder shall be termed a financial institution. The fees fixed and prescribed in the schedule may include the cost incurred by the department in fixing a finance charge under the provisions of this act. No licensee shall be required to pay any fee for examination unless the cost to the department of making such examination shall exceed the license fee paid in compliance with the provisions of this act. All costs assessed by the department at the time of the making of any examination and paid by the licensee shall be paid into the State treasury and become a part of the financial institutions fund and subject to the provisions of law relating thereto. If any licensee refuses to permit the department to make an examination it shall be subject to such penalty as the department may assess, not in excess of one hundred dollars for each day any such refusal shall continue. Any penalty assessed by the department may be collected in an action brought in the name of the State of Indiana on the relation of "The Department of Financial Institutions" in the circuit or superior court of the county in which the licensee has its principal place of business.

SEC. 21. Contracts to Prevent Competition.—No manufacturer shall sell or contract to sell specific goods which may become the subject matter of a retail installment sale in this State, whether patented or unpatented, to any retail seller in this State on the condition or with an agreement or understanding, express or implied, that the retail seller

shall sell, assign or transfer any retail installment contracts arising from the retail installment sales of the goods, or any part thereof, only to a designated licensee or class of licensees, when the effect of the condition, agreement or understanding may be to lessen or eliminate competition, or create, or tend to create, a monopoly in the licensee or class designated. Any such condition, agreement or understanding with any retail seller in this State is hereby declared to be against the public policy of this State and to be unlawful and void.

SEC. 22. Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly, to any retail seller in this state by any manufacturer that the manufacturer will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell, specific goods which may become the subject matter of a retail installment sale in this state, whether patented or unpatented, to the retail seller, unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to any designated licensee or class of licensees, shall be prima facie evidence that the manufacturer has sold or intends to sell such specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

SEC. 23.—Further Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly to any retail seller in this state by any licensee hereunder that is affiliated with or controlled by any manufacturer that the manufacturer will terminate his contract with or cease to sell specific goods which may become the subject matter of a retail installment sale to the retail seller unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to the licensee making the threat, shall be presumed to be made at

the direction of and with the authority of the manufacturer and shall be prima facie evidence of the fact that the manufacturer has sold or intends to sell the specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

SEC. 24. Subsidy of Licensees.—No manufacturer shall pay or give or contract to pay or give any thing or service of value to any licensee in this state, and no licensee in this state shall accept or receive or contract or agree to accept or receive, directly or indirectly, any payment, thing or service of value from any manufacturer, if the effect of the payment or giving of any such thing or service of value by the manufacturer, or the acceptance or receipt thereof by the licensee, may be to lessen or eliminate competition or tend to create or create a monopoly in the licensee that accepts or receives the payment, thing or service of value or contracts or agrees to accept or receive the same.

SEC. 25. Rules and Regulations.—The department shall have authority from time to time to make, amend and rescind rules and regulations necessary to carry out and enforce the provisions of this act, including rules and regulations governing the business done in this state by licensees, the content of reports required from licensees and the manner and extent of examinations made of the business of licensees. Among other things, the department shall have authority to prescribe forms in which required information shall be set forth, items or details to be shown in balance sheets and earning statements and methods to be followed in the preparation of accounts necessary to reflect factors in the business of the licensee to be reckoned with by the department when fixing a maximum finance charge on retail installment contracts. The rules and regulations of the department, other than those issued pursuant to the authority vested in the department by section 26 of this act, shall

be published and be effective in the manner and at the time prescribed by the department. No provision of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the department, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

SEC. 26. Classification of Retail Contracts and Variable Finance Charges.—It shall be the duty of the department and the department shall have power, jurisdiction and authority to investigate retail installment contracts and ascertain the facts with reference to retail installment sales and upon the basis of the ascertained facts:

(a) to classify, by general order, retail installment sales or retail installment contracts arising therefrom, according to such system of differentiation as may reasonably distinguish the classes of retail installment sales or the contracts made in connection with such sales, and

(b) to determine and fix by a general order the fair maximum finance charge that may be contracted for in any retail installment contracts or that may be contracted for in retail installment contracts of any classes which may be established by the department, and

(c) to determine and fix by a general order the fair maximum charges that may be contracted for in any retail installment contract and which may be imposed upon the retail buyer for failure to pay any installment of the time balance when it is due.

The department, in determining the classes of retail installment sales or contracts, shall take into consideration the specific goods sold thereunder, the use thereof, the length of time usually given to the retail buyer in which to

pay the unpaid balance owing on any retail installment contracts made in connection with the sales and any other factors which may reasonably afford a basis for the application of different finance charges on retail installment contracts which have or are likely to have the same or substantially the same unpaid balances.

The department, in determining the fair maximum finance charge which may be contracted for in any retail installment contracts or in any retail installment contracts of any classes which may have been established by it, shall take into consideration the availability of credit facilities to individuals who do not have the security generally required by commercial banks and the finance charge which will be necessary in order to induce sufficient amounts of efficiently operated commercial capital to enter into the business of making and purchasing retail installment contracts. The department shall fix charges sufficient to provide adequate credit facilities for retail installment sales.

The department may, from time to time, upon the basis of changed conditions or facts, reclassify retail installment sales and retail installment contracts, and redetermine and refix any maximum finance charge previously fixed by it, but the new finance charge shall not affect pre-existing retail installment contracts lawfully made. Any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance charges shall fix the effective date of the new or changed classification or finance charge, but the effective date shall not be earlier than thirty days after the date when notice of such new or changed classification or finance charge is published. Notice to the public, to retail sellers and to licensees hereunder shall be given by publication of the new or changed classification or finance charge by one publication in a daily newspaper of general circulation printed and published in the English language in the city of Indianapo-

lis. In addition, the department may require licensees hereunder to give notice of such new or changed classification or finance charge to all retail sellers with whom the licensees do business in this state.

Any finance charge fixed by the department under the provisions of this act shall be lawful notwithstanding any other law of this state.

SEC. 27. Duty of Retail Seller and Licensee.—Every person to which this act is applicable shall conduct and transact his business in the manner required hereby and every licensee hereunder shall establish and maintain methods for the conduct of his business and affairs coming within the scope of this act in accordance with the requirements hereof and of any rule or regulation of the department made in relation thereto and under the authority of this act.

SEC. 28. Waiver of Statutory Protection.—No agreement of any retail buyer before or at the time of the making of any retail installment contract shall constitute a valid waiver of any provisions of this act.

SEC. 29. Violation of Act—Punishment.—Any person who wilfully violates any of the provisions of this act, or the rules and regulations promulgated by the department under the authority hereof or any person who wilfully in any report or account filed in pursuance of any provision of this act or rule or regulation of the department makes any untrue statement of a material fact or omits to state any material fact necessary to give the department the information lawfully required by it, shall upon conviction, be fined not more than one thousand dollars or imprisoned not more than one year or both.

SEC. 30. Interpretation.—This act shall be interpreted and construed in connection with and as supplemental to the Uniform Sales Act, as amended, and the Uniform Con-

ditional Sales Act and any terms used in this act which are defined in either of said acts shall have the meaning given thereto by the aforementioned acts unless the context hereof clearly requires another meaning. Nothing in this act shall be construed to repeal any part of either of the acts mentioned in this section or any existing law of this state relating to interest or consideration that may be charged upon the loan, use or forbearance of money or sale of credit, but this act shall be construed as supplemental thereto.

SEC. 31. Existing Contracts.—None of the provisions of this act shall apply to any sale or to any contract to sell made prior to the taking effect of this act which if made after this act takes effect would be a retail installment sale or contract and this act shall not affect pending litigation.

SEC. 32. Captions.—No caption of any section of this act shall in any way affect interpretation of this act or any part thereof.

SEC. 33. Severability Clause.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SEC. 34. Short Title.—This act may be cited as the Retail Installment Sales Act.

SEC. 35. Time of Taking Effect.—This Act shall take effect on the first day of July, 1935.

C.

The Date of the Decree Sought to be Reviewed and the Date Upon Which the Application for Appeal is Presented.

The date of the decree sought to be reviewed is October 2, 1935.

The date upon which the application for appeal is presented is December 23, 1935.

D.

Statement Showing that the Nature of the Case and the Rulings of the Court are Such as Bring the Case Within the Jurisdictional Provisions Relied On.

The action in this case was for an interlocutory and permanent injunction for the purpose of suspending and restraining the enforcement, operation and execution of a statute of the State of Indiana, being the Act above referred to, by restraining the action of the appellants (defendants) as officers of said State in the enforcement and execution of said statute upon the ground that said statute violates Section 1 of Article XIV of the Amendments to the Constitution of the United States and that its enforcement will deprive complainant of its property without due process of law and deny it the equal protection of the laws in violation of said provision of the Constitution. (See Bill of Complaint.)

A three-judge Court was convened pursuant to Section 266 of the Judicial Code as amended on February 13, 1925, and the application for an interlocutory injunction was submitted to it and evidence heard. (See entry of July 3, 1935.) Thereafter a final decree was entered. (See entry of October 2, 1935.) The appeal in this case is from the

final decree of the three-judge Court permanently enjoining the appellants (defendants) from enforcing or attempting to enforce against appellee (complainant) any of the provisions of the Act of the General Assembly above set out, being Chapter 231 of the Acts of the General Assembly of the State of Indiana at its 79th Regular Session, on the ground that said Act is unconstitutional and void in that it depriyes complainant of its property without due process of law. (See Conclusions of Law and entry of October 2, 1935.)

E.

The Cases Believed to Sustain the Jurisdiction of the Supreme Court.

The following cases are believed to sustain the jurisdiction of the Supreme Court:

Smith et al. v. *Wilson et al.*, 273 U. S. 388;

Stratton, etc., v. *St. Louis Southwestern Railway Company*, 282 U. S. 10;

Brucker v. *Fisher*, 49 F. (2d) 759.

Respectfully submitted,

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FILE COPY

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1935.

PAUL V. MCNUTT, Governor of the State of Indiana,
PHILIP LUTZ, Attorney General of Indiana,
RICHARD A. MCKINLEY, Director of the Department of Financial Institutions of the State of Indiana,
OSCAR P. WELBORN, HARVEY B. HARTSOCK, C. M. SETSOR, MYRON GRAY and ROBERT BATTON, Members of the Commission of Financial Institutions of the State of Indiana,
HERBERT M. SPENCER, Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana,

Appellants,

v.

MCHENRY CHEVROLET CO. INC.,

Appellee.

No. 710.

APPELLANTS' BRIEF.

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IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1935.

PAUL V. MCNUTT, Governor of the State of Indiana,
PHILIP LUTZ, Attorney General of Indiana,
RICHARD A. MCKINLEY, Director of the Department of Financial Institutions of the State of Indiana,
OSCAR P. WELBORN, HARVEY B. HARTSOCK, C. M. SETSOR, MYRON GRAY and ROBERT BATTON, Members of the Commission of Financial Institutions of the State of Indiana,
HERBERT M. SPENCER, Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana,

Appellants,

v.

MCHENRY CHEVROLET CO. INC.,

Appellee.

No. 710.

APPELLANTS' BRIEF.

I.

THE OPINION OF THE COURT BELOW.

No opinion was written by the court below.

II.

STATEMENT OF THE CASE.

This case was begun in the court below by the appellee by filing its Bill of Complaint in Equity, (R. pp. 1-28) seeking relief by injunction against the enforcement by the appellants of Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana on the ground that said Act is unconstitutional.

A three-judge court was convened pursuant to Section 266 of the Judicial Code as amended on February 13, 1925, for the purpose of hearing appellee's application for an interlocutory injunction and the evidence was heard upon said application. (R. pp. 31, 47.) Thereafter, with the application for an interlocutory injunction undecided but not withdrawn, additional affidavits were introduced in evidence, upon which evidence including the affidavits introduced upon the application for an interlocutory injunction, the court found the facts specially and stated conclusions of law thereon and entered a final decree in harmony with such conclusions permanently enjoining the appellants from enforcing or attempting to enforce against appellee any of the provisions of said Act. (R. pp. 47-75.)

THE CONCLUSIONS OF LAW.

The court below did not write an opinion, simply stating its conclusions of law upon the facts found, to which conclusions appellants are obliged to go to ascertain the exact ground for the decree. These conclusions are as follows:

> "1. That Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of In-

diana is unconstitutional and void in that it deprives complainant of its property without due process of law.

"2. That plaintiff is entitled to a judgment perpetually enjoining and restraining the defendants and each of them and their respective agents and employees from in any manner enforcing or threatening to enforce against complainant the provisions of said Act." (R. p. 74.)

THE ACT.

For the convenience of the court the Act assailed is set out in its entirety in appendix "A." This Brief pages 45-69.

THE RESPECTIVE CLAIMS OF THE PARTIES.

It was claimed by the appellee that said Act is unconstitutional and void in that it denies to it the rights guaranteed by Section 1 of Article XIV of the Amendments to the Constitution of the United States. The appellants, on the other hand, claimed and now claim that the Act does not violate the foregoing constitutional provision but is a valid exercise of the police power of the State.

THE BASIS OF APPELLANTS' CLAIM.

Briefly stated appellants' claim was based upon the following factual situations shown by the evidence and found by the court in its findings of fact, namely:

(1) The business of financing retail installment sales and the charge for the extension of credit involved therein including the method of "setting up" such charges were accompanied by abuses which were detrimental to the public welfare and, in the promotion of the public welfare, required regulation.

This need was emphasized by the further fact that by reason of the method employed the ordinary usury statute was wholly inadequate and unsuited to the correction of said abuses.

THE FACTUAL BASIS FOR REGULATION.

(*The findings of fact.*)

It is unnecessary in this statement to make a complete analysis of all the findings of fact which are quite lengthy. The following facts bear directly upon the legal questions involved:

(1) The Department of Financial Institutions is a department of government of the State of Indiana created under the Indiana Financial Institutions Act, Acts of the General Assembly 1933, Chapter 40, Sections 1 and 4. The function of the Department is to supervise, regulate and control the business of banks, trust companies, building and loan associations and other credit agencies, as well as small loan licensees furnishing money in amounts of $300.00 or less. From the time it was established on July 1, 1933, it received complaints from different persons directed against various types of financial institutions, and companies engaged in the business of appellee and those buying installment contracts and because of the complaints and in pursuance of its power of investigation, the Department began a study of consumer credit agencies operating in Indiana, the result of which was contained in a report published and presented to the 79th Session of the General Assembly of the State of Indiana, which report was entitled "Indiana Consumer Finance Agencies." The report was not limited simply to finance companies, but included all agencies theretofore under the supervision of the Department, in so far as those agencies and companies supplied credit to consumers, as well as installment

sellers who hold their own paper and companies engaged in the business of buying installment contracts. A considerable portion of the report was devoted to finance companies and what the report characterized as their "effective rates of interest for the extension of credit," the desirable and undesirable features of the business, as well as the undesirable features of instalment selling by dealers who hold their own paper, and the recommendations of the Department for legislation to restrict the original contract between buyer and seller, as well as supervise finance companies. (R. pp. 65, 66.)

(2) The variation of the amount of the finance company's discount for purchasing a retail instalment sale contract for twenty companies in Indiana on the identical unpaid balance of $300.00 on the purchase on instalments of a new automobile ranged from $28.00 to $60.00 for one year. *These amounts in terms of interest based upon the diminishing unpaid balance ranged from 18.7% to 44.4% per annum.* On used automobiles for the same unpaid balance for the same period of time the amounts ranged from $35.00 to $85.20, and *these amounts in terms of interest similarly computed ranged from 23.9% to 69% per annum.* These amounts included the cost of insurance for the retail buyer. The types of insurance coverage, the cost of which was included in these various amounts, is not disclosed by the evidence, nor the amount of the coverage. Insurance costs vary in amount according to types of coverage, make of car, zone in which kept and amount for which insured, and this variable factor and others mentioned such as credit risk, loss hazard, and cost of collection account for part of the variation in amounts, the extent of which can not be determined by the evidence. (R. pp. 67, 68.)

(3) Prior to the enactment of the Retail Instalment Sales

Act, the Act under consideration, the finance charge was represented to include cost of insurance, but *the actual cost of the insurance, as distinguished from the remaining part of the finance charge, might not be known to the retail seller or to the retail buyer.* (R. pp. 50, 51, 66, 67.)

(4) The form of contract supplied to the retail seller by the finance company contemplated the sale of the merchandise at whatever price was agreed upon by the parties and that price was known as "the time price." *No separate item appeared in the contract as the time price differential,* and the said differential included in the total time price was not translated into percentage calculations based upon the unpaid cash balance. (R. p. 67.)

(5) The Department of Financial Institutions in its report to the Governor and the General Assembly recommended that the cost of the credit extension, as the term is used in the report, be separated from the cost of insurance and expressed in terms of a rate per cent per month based upon the diminishing unpaid balance of the price of the merchandise. This recommendation was made to give the retail buyer a comparative cost basis. (R. pp. 69, 70.)

(6) Most finance companies furnish retail dealers with blank forms of conditional sale contracts, rate charts and work sheets, whereby the retail seller may easily compute the amount of the so-called time-price. *Some finance companies have many different rate charts for the same new car as well as for old ones.* (R. pp. 61-63.)

(7) The practice of rebating is engaged in by some finance companies. This is a practice whereunder, by special agreement with the retail seller, the finance company furnishes him

with its regularly authorized rate chart but agrees to and pays the retail seller a certain amount in cash on each contract accepted by the finance company. This amount goes to the retail seller without any restrictions whatsoever. *Any rebate paid to the dealer increases the so-called time-price to the buyer.* (R. pp. 70, 71.)

(8) The practice of adding to the finance charge an additional amount known as "dealers pack" exists only in the case of the instalment sale of automobiles. *This amount usually ranges from $10.00 to $25.00 although in some instances it may reach $40.00 or more. The retail buyer is not informed as to what this item is, and may be led to believe that the whole amount added to the unpaid balance, including the pack, is retained by the finance company. In practice, however, the finance company collects but does not retain the pack. It is collected by the dealer from the finance company at the time of the sale of the contract, or, in some instances after the contract has been fully paid, the amount is credited to the reserve account of the dealer with the finance company.* (R. pp. 70, 71.)

(9) Forms of contracts supplied to retail sellers by finance companies generally contain no provision for a return of any part of the finance charge to the buyer in the event he wishes to prepay the contract. Where the finance company has already paid the amount of the pack or rebate to the dealer, in order to re-imburse itself it must collect these amounts from the retail buyer. (R. pp. 71, 72.)

(10) Every finance company and retail seller recognizes that losses will occur and to compensate the finance company as assignee of the retail instalment contract and the retail seller as the original party thereto for such losses, there is included in

the differential or discount fixed by the finance company in the rate or payment charts, an amount which may be set aside as a reserve for losses. This amount is included in the differential or discount irrespective of the type of assignment which the finance company requires from the retail seller. Out of the reserve the retail seller and finance company are compensated for losses which occur, and a division of the item may be made between them according to the proportion of the risk of loss borne by each. (R. p. 64.)

(11) Appellee sells automobiles at what is known as a cash sale price, which in no instance exceeds $1,500 for one automobile, and also on the installment plan. From 60% to 65% of appellee's total sales have consisted of installment sales. (R. p. 49.)

(12) There are 843,066 families in the State of Indiana. Out of this number there are 700,000 families whose yearly income is less than $2400 each. There are 400,000 families whose yearly income is less than $1,000 each. The latter class of families constitute the largest class of purchasers of merchandise who use credit provided by means of retail instalment sales and contracts. (R. p. 73.)

III.

SPECIFICATIONS OF ERROR.

The ultimate error assigned is that the District Court erred in holding that Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana is unconstitutional and void in that it deprives the appellee of its property without due process of law. The detailed specifications of

error (all of which are intended to be urged here) are set forth in the assignment of errors, and are as follows:

(1) The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its first conclusion of law in said case in holding and deciding that Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana is unconstitutional and void in that it deprives complainant of its property without due process of law.

(2) The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its second conclusion of law in said case in holding and deciding that the complainant is entitled to a judgment perpetually enjoining and restraining the defendants and each of them and their respective agents and employes from in any manner enforcing or threatening to enforce against the complainant the provisions of Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana.

(3) The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in its decree in granting and issuing the injunction herein.

(4) The District Court of the United States for the Southern District of Indiana (Indianapolis Division) erred in failing to find as a fact and in disregarding the same in its conclusions of law and decree that the business whose regulation is provided for by Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of the State of Indiana is designed for use by and is used by a considerable portion of the people of the State in financing of retail instalment purchases; that such business and the methods of transacting the same operate to

the detriment of the retail instalment buyer who pays the cost of the supplying of capital by the finance companies to the retail dealers but who, instead of deriving benefit from the competition between finance companies for the retail dealers' business, are placed at a disadvantage by the concealment of "packs" and "bonuses" as a part of the finance charge and by other methods shown by the evidence; and that by reason thereof said business directly affects the public welfare and is subject to regulation under the police power. (R. pp. 76, 77.)

IV.

SUMMARY OF ARGUMENT.

1. The findings of fact show that the business regulated by Chapter 231 of the Acts of the 79th regular session of the General Assembly of Indiana is a proper subject of regulation by the state in the exercise of its police power. Findings Nos. 27-36 inclusive. (R. pages 66-72.)

The purpose of the Act, as is evident from a consideration of its provisions, is to prevent extortionate and unreasonable prices for credit extended in retail installment sales of goods of a sale price less than $1500 where the obligations of the sellers and buyers are evidenced by conditional sales contracts and by such other instruments as in the act are termed "retail installment contracts," and to prevent certain practices, in their nature fraudulent, which have arisen out of the combination of the retail seller and the finance company in the modern business of sales financing. Appendix "A," pages 45-69 of this brief.

2. It is not the purpose of the Act to fix the price of any goods sold by a retail seller and which is the subject of a retail

installment sale contract; nor can the Act be so construed as to exhibit such an intention of the legislature.

There is no provision in the Act under consideration which purports to fix or to authorize the fixing of the price of the merchandise. The Act expressly provides that the price of the merchandise referred to in the Act as the "cash price" means the price agreed upon by the parties without limitation as to the factors which may be taken into consideration in making the agreement. Appendix "A," page 46 of this Brief.

3. The foregoing construction, which is clearly expressed in the Act, operates as a complete avoidance of the constitutional pitfalls involved in the case of any attempt to fix the price of merchandise generally and makes the authorities on such subject wholly irrelevant; and if objection be made to the construction, such objection is fully met by the principle that the court, in the construction of a statute will, if possible, give it a construction in harmony with constitutionality.

Panama R. Co. v. Johnson, 264 U. S. 375 at p. 390;
United States v. Jin Fuey Moy, 241 U. S. 394;
United States v. Delaware Hudson Co., 213 U. S. 366 at pp. 407-408;
Ashwander et al v. Tennessee Valley Authority, No. 403-4, October Term 1935;
Crowell v. Benson, 285 U. S. 22 at p. 62.

4. The General Assembly of Indiana might well have considered that extortionate charges for credit in retail installment sales and the use of hidden excess charges as shown by the findings prevailed in Indiana, and that legislation to overcome the same was in the interest of the public welfare of the citizens of

the State of Indiana. Findings Nos. 27-36 inclusive. (R. pages 66-72.)

It was evident to the legislature from the decisions of the courts that the usury laws were inadequate to cope with the cost of credit in transactions of this character, and it was equally evident that the legal device of time price, based as it is upon the right to sell merchandise at any price parties may agree upon, could not be left untouched if any remedy was to be provided for the factual situation revealed above. It was, therefore, reasonable for the legislature to enter the field of fixing the cost of credit.

Griffith v. Connecticut, 218 U. S. 563;
Munn v. Illinois, 94 U. S. 113;
Brass v. North Dakota, 153 U. S. 391;
German Alliance Insurance Co. v. Lewis, 233 U. S. 389;
Hall v. Geiger-Jones Co., 242 U. S. 539;
Chesapeake & Potomac Tel. Co. v. Manning, 186 U. S. 238 at p. 245;
Nebbia v. People etc., 291 U. S. 502.

5. Since the purpose of the legislation is valid and within the exercise of the police power of the state, due process is not denied by legislation authorizing the fixing of maximum finance charges, maximum delinquency charges and minimum discounts on prepayment for use in retail installment sales, as provided in sections 6 and 26 of the Act.

The plan of the statute was to start at the point where the legal device of time-price leaves off, thereby permitting the parties to fix the price of merchandise where they pleased, and requiring as a condition to the right to discount the paper, the

sale thereof only to persons who have been licensed to buy such paper.

Nebbia v. People etc., 291 U. S. 502;
German Alliance Insurance Co. v. Lewis, 233 U. S. 389 at p. 413;
Munn v. Illinois, 94 U. S. 113;
Griffith v. Connecticut, 218 U. S. 563;
Dillingham v. McLaughlin, 264 U. S. 370.

6. The decisions of the courts have uniformly held that the differential between what a seller may choose to sell goods for cash and what the same seller may choose to sell the same goods for on credit is not interest nor within the prohibition of the usury laws, but no court has held, so far as appellants know, either in these decisions or in any construction of the due process clause of the Fourteenth Amendment, that the usury laws are the uppermost limits to which a state may go in advancing the general prosperity and welfare of its citizens through control of the cost of credit. Neither the novelty of the method of regulation made necessary to meet new situations, nor the absence of precedent will influence the court in determining whether a law lacks due process.

Munn v. Illinois, 94 U. S. 113;
Nebbia v. People etc., 291 U. S. 502 at p. 536.

7. The rights of property and liberty guaranteed to the appellee by the due process clause of the Fourteenth Amendment are not absolute, but are subject to the right of the public to limit them in the common interest.

Nebbia v. People etc., 291 U. S. 502 at p. 523;
Munn v. Illinois, 94 U. S. 113;

Hardware Dealers Mut. Fire Ins. Co. v. Glidden Co., 284 U. S. 151 at p. 157;
Advance-Rumely Co. v. Jackson, 287 U. S. 283.

8. The record wholly fails to show that the Act under consideration deprives appellee of its property or liberty without due process of law, and the court in the decision of a constitutional question will not enter into the field of speculative effects upon persons other than parties to the action.

Engle v. O'Malley, 219 U. S. 128;
Blair v. U. S., 250 U. S. 273 at p. 279.

9. The provisions of the Act are reasonably suited to effect its purpose and are not unreasonable, arbitrary or capricious. That being true, the policy of the legislation is for the legislature and not for the court. Having arrived at the conclusion that the state in the exercise of its police power has the right to fix maximum charges for credit extension in the cases applicable to appellee, the necessity of enforcing the limitations imposed is apparent. If the state cannot make legislative provision adapted to enforce such a right then the right itself is impotent. Sections 9, 10, 11 and 15(d) are not only adapted to the purpose of carrying out the finance charge provisions of the Act, but are absolutely essential thereto. They are, therefore, valid upon the principle that the purpose being proper such acts as are reasonably necessary to carry it out are likewise proper and within the scope of the state's exercise of the police power.

Nebbia v. People etc., 291 U. S. 502 at p. 537;
Mutual Loan Co. v. Martell, 222 U. S. 225;
Advance-Rumely Co. v. Jackson, 287 U. S. 283.

10. The very essence of the business regulated is discount and the very essence of the plan of regulation is the control of

the discount. Section 11 which requires finance companies to have a license, section 18 which requires annual reports from licensees, and sections 19 and 20, which invest the department with authority to examine the business of licensees to discover violations and obtain information with which to fix charges under the Act and to assess and collect the cost of examination are a part of a definite and articulate plan of regulation bearing a reasonable relation to the prevention of extortionate and hidden charges in retail installment contracts in which a finance company may become interested.

Griffith v. Connecticut, 218 U. S. 563;
Mutual Loan Co. v. Martell, 222 U. S. 225;
Nebbia v. People, etc., 291 U. S. 502.

11. It is not a valid objection that the Act attacked deprives the appellee of due process of law in violation of the Fourteenth Amendment because it violates Section 1 of Article 4 of the State Constitution. Moreover, appellee is not in position to raise the question. However, the Act does not violate said provision of the Indiana Constitution.

Blue v. Beach, 155 Ind. 121;
State, ex rel., v. Beil, 157 Ind. 25 at p. 29;
Isenhour v. State, 157 Ind. 517;
Wallace v. Feehan, 206 Ind. 522 at p. 532.

ARGUMENT.

1. The findings of fact show that the business regulated by Chapter 231 of the Acts of the 79th Regular Session of the General Assembly of Indiana is a proper subject of regulation by the State in the exercise of its police power.

The business regulated is that of extending credit to retail buyers in installment sales of merchandise. In order to effect the regulation the Act prescribes the form of contract which must be used by the retail buyer and seller; authorizes the fixing of maximum finance charges, maximum delinquency charges and minimum discounts; requires the parties to exhibit the agreed price of the merchandise in the contract; provides for the licensing and regulation of finance companies and restricts the right of the retail seller to sell and the right of the finance company to buy retail installment contracts in order that the maximum charges and minimum discount may be made effective.

Appellee McHenry Chevrolet Co., Inc., challenged the Act as applied to it. Findings 3 to 19, inclusive, describe how appellee conducts its business and particularly its retail installment sales.

The company has been engaged in the business of selling automobiles at retail in the city of Indianapolis, Indiana, since it was organized in 1933, R. page 49. New and used automo-

biles are sold. The automobiles are sold at retail for cash or on the installment plan. On the latter plan, a written contract of purchase and sale is executed in which, among other things, the price of the automobile, as fixed by agreement between the parties, is stated. In the contract used by appellee prior to the enactment of the Retail Installment Sales Act the price which the parties had agreed upon for the automobile was known as the "time price." Sixty per cent (60%) to sixty-five per cent (65%) of the company's total sales of new and used automobiles have been installment sales and the automobiles sold have been of a cash price less than $1500, R. page 49.

Appellee has always sold its installment sales contracts to General Motors Acceptance Corporation of Indiana, Incorporated, and desires to continue to do so. R. page 52. The latter corporation was organized in 1929 to buy and deal in contract obligations and similar choses in action, but it purchases contracts only from sellers of manufactured products of General Motors Corporation. In the findings General Motors Acceptance Corporation of Indiana, Incorporated, was referred to as GMAC and for convenience will be so referred to herein. R. page 48.

The appellee conducts its sales on a basic price for a cash sale and the price is fixed either by the manufacturer or by its desire for profit as modified by the factors of competition. When it has an opportunity to sell an automobile on installment, it does so pursuant to an installment selling plan widely in use in Indiana by retail sellers of automobiles and other merchandise. The plan was promulgated by GMAC. The

form of contract and other materials are supplied by the latter company. The contract on its face calls for the payment of the price of the merchandise less any down payment and provides for retention of title in the company to secure the payment. The price paid in the contract is determined according to the rate charts and other material in use under the GMAC plan. R. pages 50, 52-57.

To determine the price in an installment sale under the GMAC plan the appellee is first required to ascertain the amount the buyer can pay in cash. This amount is deducted from appellee's basic price, however determined, thus leaving an unpaid balance. The next step in the plan is to find out the number of months the buyer will want for payment. With the amount remaining to be paid (unpaid balance) thus fixed and the time desired for payment known, appellee applies the rate chart furnished by GMAC and is informed what amount must be added to the unpaid balance in order for it to sell the contract to GMAC and realize therefrom an amount equal to the unpaid balance. The amount shown on the rate chart to be added to the unpaid balance, under the GMAC plan, is known as "the time price differential." The price of the automobile may then be fixed by appellee as the sum of the down payment, the unpaid balance and the time price differential and the form of contract provided by GMAC may then be executed. R. pages 54-57, 58.

The contract calls only for the payment of a lump sum, designated as "the total time price." It does not disclose any amount charged for insurance or for cost of financing and, even though the buyer might learn, upon inquiry, the amount of the time

price differential used by McHenry Chevrolet Co., Inc., in arriving at the total time price, it was practically impossible for the buyer to know the cost of financing because the insurance cost might not be known to the parties. R. pages 50, 66, 67.

Other retail sellers in Indiana whether selling automobiles or other merchandise use substantially similar contracts and compute their prices in installment sales in substantially the same way. R. pages 60-63.

Findings 20 and 21, and 25 to 37 inclusive, recount the facts and matters which persuaded the General Assembly of Indiana that legislation fixing maximum finance charges, maximum delinquency charges and minimum discounts in installment sales and making those charges and discounts effective was necessary to the public welfare of the citizens of Indiana. R. pages 60-63, 65-72.

At the time of the legislation not less than 140 finance companies were doing business in Indiana. All of them were engaged in buying retail installment contracts and the plan of each was similar to that of GMAC. Every retail seller who sold goods of any sort on the installment plan was a potential source of business to the finance companies. So far as the record goes, no retail seller was under obligation to sell his retail installment contracts to any particular finance company. The fact is unmistakable that every seller had many finance companies competing for the privilege of purchasing the retail installment contracts arising from his installment sales. GMAC did business only with retail sellers who sold manufactured products of General Motors Corporation, but most of the 140 finance com-

panies refrained from purchasing contracts only when the terms were not satisfactory to them.

Every finance company doing business in Indiana maintained an office organization, equipment and personnel to carry on its business and set-up accounts and records for the contracts purchased by it. The companies all furnished retail sellers with data essentially identical with that which GMAC furnished to retail sellers of General Motors Corporation, although many of the companies had different rate charts for the same car, whether new or used. The forms of contracts provided by these companies were essentially identical with that furnished by GMAC. R. pages 60-63.

All of the companies did business on a discount basis when buying installment contracts. This simply meant that they paid the retail seller something less than the face amount of the contract. The amount of the discount was fixed by each company in its rate charts and was variously called "time price differential" or "finance charge." The retail seller knew that ordinarily he would be paid an amount for his contract equal to the difference between its face amount and the discount provided in the rate charts. R. pages 57, 58.

Extortionate Charges. The variation in amount of discount for twenty companies in Indiana on the identical unpaid balance of $300 on the purchase of a new automobile on installments for one year ranged from $28 to $60. In terms of interest, based upon the diminishing unpaid balance, these discounts ranged from 18.7% to 44.4% per annum. On used automobiles for the same unpaid balance for the same period of time, the

amount of discount ranged from $35 to $85.20. The latter discounts, computed in terms of interest upon the diminishing unpaid balance, ranged from 23.9% to 69% per annum. The amount of the discount on furniture was generally higher. On radios the discount was higher than either furniture or automobiles. On automobile tires the discount expressed in terms of interest and computed on the diminishing unpaid balance, ranged from 33.6% to 106.1% per annum. (R. pp. 67, 68.)

Installment sales of radios, electric goods and refrigerators amount to approximately 6½% of all retail installment sales in Indiana and installment sales of furniture amount to approximately 13% of the total. The ratio of automobile installment sales to all such sales is more than 60%. The amount of automobile tire installment sales is negligible. R. page 68.

The amount of the discounts which various companies fix in their rate charts represent the factors of cost, expense, loss hazard, capital investment, depreciation, insurance for the retail buyer and profit. The evidence does not disclose the proportion of these elements for any company.

The Department of Financial Institutions which is charged with the enforcement of the challenged Act made an investigation of consumer credit agencies, including finance companies, and recommended legislation requiring that the cost of credit extension in installment sales be separated from the cost of insurance and that the former be expressed in terms of a rate per cent per month based upon the diminishing unpaid balance of the price of the merchandise. This was recommended so that the purchaser would have a basis on which to compare cost of credit in installment sales with cost of credit from direct lending agencies. (R. pp. 69, 70.)

The finance companies had always done business on a discount basis as described above and it may be that the legislature deemed the provisions for maximum charges and minimum discounts in connection with the provisions requiring the parties to exhibit the agreed price of the merchandise, the down payment, the insurance cost and finance charge would provide a comparative cost basis.

Reserves, Bonus, Rebate and Pack. "Reserves" usually refer to an amount paid the seller out of the discount on a contract. (R. p. 59.) The reserve is contracted for between the seller and the finance company, either by general agreement, if he sells most of his contracts to a particular finance company, or by special agreement when each contract is sold. The theory of the reserve is that the dealer should be compensated for the loss hazard he is under. (R. p. 70.)

The GMAC plan includes a reserve in the discount for the loss hazard incurred by GMAC, as well as for the dealer. (R. p. 64.) The amount of the reserve which GMAC agrees to set aside for the retail seller is so fixed as to be sufficient, in the case of the average seller of manufactured products of General Motors Corporation, to cover all losses and provide an additional margin over losses in excess of the actual loss experience. (R. p. 59.)

Under the GMAC plan, the dealer is liable on a limited recourse agreement. The amount of reserve is credited to the dealer in a reserve account maintained by GMAC in the dealer's favor and is paid to the dealer from time to time as an amount is accumulated in the account. (R. p. 59.)

"Bonus" also refers to an amount paid the seller out of the

discount on a contract. Sometimes it is referred to as "Dealer's Bonus" or "Dealer Participation." The names eloquently describe the character of the item. The finance companies purchase the paper without any recourse whatsoever on the seller, but the companies pay the seller a part of its discount. The bonus is part of the arrangement when the paper is bought. It may be paid in cash by paying the seller more than his unpaid balance, or it may not be paid until collected from the buyer. GMAC does not pay a bonus. R. p. 65.

Some of the finance companies doing business in Indiana pay "rebates" to retail sellers that sell their contracts to that finance company. The rebate is a certain amount in cash paid to the retail seller on each contract which the particular finance company accepts. It is distinguished from the reserve and bonus in that it is paid without reference to the discount or collection of the contract and goes to the retail seller without any restrictions whatsoever. The evidence does not disclose amounts paid as rebates. R. p. 70.

The "pack" exists only in the case of installment sales of automobiles. The practice is for the seller to add to the discount shown in the rate chart an additional amount known as "pack." The retail buyer is not informed that the item is not part of the discount required by a finance company, but on the contrary may be led to believe that the whole amount added to the unpaid balance, the sum total of the pack and the discount, is retained by the finance company. In practice, the finance company collects, but does not retain the pack. The dealer collects the amount from the finance company at the time he sells the contract or, in some instances, after the contract has been fully paid the amount is credited to the reserve account of the dealer with the finance company. The common range of packs is from

$10 to $25, although in some instances, it may reach $40 or more. R. pp. 70, 71.

It is significant that all of the charges, whether cost of financing, insurance, reserve, bonus, rebate or pack, have the common characteristics of being included in the discount added to the basic price by the retail seller and being unknown, as to amount, to the retail buyer. However legitimate the charges for insurance, cost of financing and reserve may be the inseparability of the items as they appear in a single unit makes it impossible for the retail buyer to know whether he is paying more for insurance and more for financing than he would have to pay from other available sources of credit. The character of the items of rebate, bonus and pack is such that the buyer not only has no means of knowing the amount of each of them, but probably does not suspect that they exist. Furthermore, neither of the parties on the other side of the bargain can inform him that the items do exist or what is the amount of them. The finance company, in order to avoid any implication of usury, maintains a cool aloofness in regard to the transaction between the retail seller and retail buyer, however genuine in fact its affection for the retail seller may be. The retail seller, in order that his "selling policies" may not be compared with competitors, acknowledges no intimacy with the finance company that will purchase the buyer's contract.

In the final analysis the selling policy referred to in finding No. 29 must mean only that the retail seller, through the medium of the discount facilities provided by the finance company has an unfair weapon in negotiations between the seller and the buyer to establish the basic price on which the discount will be predicated. If the seller fixes a low price for the merchandise and adds the difference in the discount, whether an additional

amount for rebate or pack is added or not, whatever equality of bargaining power theretofore existed between the seller and buyer has been robbed of its efficacy. R. p. 71.

Whether the citizens of Indiana are unusually sensitive to the refinements of business negotiations is not shown by the record. That they are only average in their discernment may be assumed. It is not difficult to see that the only element restraining the seller and finance company from relieving the buyer of his bargaining power within the variable limits offered by the buyers credit and the security value of the goods is the extent to which the seller and the finance company will cooperate with one another.

Other elements of the business of installment selling. The forms of contract supplied to retail sellers by finance companies generally contain no provision for a return of any part of the "finance charge" or "time price differential" if the buyer prepays the contract. As opposed to the lack of prepayment provision every contract provides for interest on overdue installments to the extent permitted by the laws of the State, and in Indiana the extent is 8% per annum.

The report of The Department of Financial Institutions did not deal with delinquency charges as such or prepayment provisions, as they are provided for in this Act, because its recommendation that the finance charge be stated as a rate per cent per month on the unpaid diminishing balance automatically took care of both items. R. p. 72.

In addition to delinquency charges some finance companies require a reinstatement fee, collect amounts on account of letters sent or acts done in connection with the collection of delinquent installments, and charge transfer fees when a condi-

tional vendee sells his equity to another person and the latter desires to continue payment in accordance with the provisions of the conditional vendee's contract. Methods of enforcement of these fees which are not ordinarily provided for in the contract evidencing the sale vary, but are sometimes enforced by refusal to deliver the certificate of title held by the finance company in pursuance of the retention of title in the original conditional sale contract. R. p. 72.

The foregoing facts read in connection with the provisions of the challenged Act reflect the purpose of the legislation with such clarity that denial is impossible. It is not conceivable that the members of the General Assembly of Indiana were unaware of the facts disclosed in this regard. The report of The Department of Financial Institutions was before them and many of the abuses were set out and a remedy suggested. Even without the report it cannot be assumed that the General Assembly was without independent knowledge of the circumstances surrounding the extension of credit in retail installment sales in Indiana. No declaration of purpose is contained in the Act, but every provision is pointedly directed to correction of an abuse disclosed by the record. The validity of the purpose of this legislation has been recognized by the courts throughout the range of the common law. Even for merchandise, an unreasonable price is not permitted where the parties have not agreed. If they have agreed, the price will not stand in the face of fraud. The concern of this Act is a reasonable price for credit and what may be represented as credit fixed by the parties within the maximum limits prescribed by the State and under conditions reasonably free from the possibility of unfair practice.

2. It is not the purpose of the Act to fix the price of any

goods sold by a retail seller nor can the Act be so construed as to exhibit such an intention of the legislature.

There is no provision in the Act under consideration which purports to fix or to authorize the Department to fix the price of any merchandise which may become the subject matter of a retail installment sale. The Act only provides that the price agreed upon by the parties for the merchandise be set out in the written instrument required by Sections 2 and 4. In most instances the written instrument will be a conditional sales contract. Whatever price is finally agreed upon by the parties must be set out in the conditional sales contract and is the "cash price" as that term is defined in the Act.

In the court below appellee insisted that the effect of the Act is to fix the terms and prices and the manner in which retail sellers might sell and conduct their sales of automobiles at time prices payable in installments. It was asserted that the parties to a contract of sale which is finally made as an installment sale never agree upon a cash price, and that, therefore, no cash price can be stated nor can the parties be required to agree upon a cash price. It is obvious that the contention was based on the premise that the term "cash price" as used in the statute means the price a seller would have sold his goods for had the sale been one for cash on delivery. It is equally obvious that the term "cash price" was not defined in this way. The language of the statute is sufficiently clear to resolve any doubts on the matter. It says that "cash price" means the price the parties agree upon for the goods. This neither means that the parties are required to agree upon a price which would have been satisfactory to each of them had the sale been for cash on delivery, nor does it mean that the parties must agree upon a price in rela-

tion to any other terms of the bargain which might be considered by them. Prior to the challenged Act appellee had characterized the price fixed by the agreement of the parties as the time price. Now the statute requires it to characterize the price so fixed as the "cash price." The statute does no more than this by its definition. The right of the seller to name the price at which he chooses to sell is not put in issue by this definition. That right is most carefully preserved.

This court will presume that the legislature was acquainted with its decision in Hogg v. Ruffner, 66 U. S. 115, and with the decision of the Supreme Court of Indiana in Newkirk v. Burson, 28 Ind. 435. Both courts held that a vendor could sell merchandise at a higher price on credit than he had fixed for the same merchandise when payment was to be cash and not violate the usury laws. It is reasonable to assume that the legislature was acquainted with the administrative difficulties which would have been encountered by the courts had a different result been reached in either case. The courts had and now have no adequate means for ascertaining what price a vendor would have sold goods for cash when he has, in fact, sold them on credit and hardly more adequate means of ascertaining when a vendor has raised his price for the sole purpose and with the intent of taking excessive interest.

Whether the courts bottomed the decisions in the cases mentioned on the administrative difficulties involved or whether they preferred to rest on the principal that a man may set his own price, whether for cash or for credit, it must be assumed that the legislature was acquainted with the results of the cases. It would have availed the legislature nothing in its effort to protect the welfare of the citizens of Indiana in the situations presented by

the facts to require sellers to fix a price for goods involved in a credit transaction upon the basis that the goods were to be sold in a cash transaction and thereafter add the amount to be charged for any credit extended. Such a requirement would have been so indefinite as to be incapable of determination thereby inviting disapproval on the ground of administrative difficulties alone. More serious, it would have put the right of the seller to name his price in issue.

On the other hand, the legislature knew that it could require the parties to a contract for the sale of merchandise to make it in writing and could require the parties thereto to state the price they had agreed upon. It was equally clear that no insuperable administrative difficulties were involved for the courts when questions were presented concerning the price which the parties had agreed upon. Furthermore, the price agreed upon could be a bona fide credit price or "time price," as appellee is pleased to call it, fixed without reference to the price that would have been charged had the sale been for cash. It will be presumed that it was with knowledge of the foregoing situation that the legislature defined the term "cash price" as it is used in the Act under consideration.

On the meaning of the term "cash price" as we construe it, the net effect of the contention of the appellee may now be stated. It is that the provisions of the Act which require every retail seller to execute a written contract to evidence the sale and to show the price that parties have agreed upon for the merchandise are provisions fixing the price of the merchandise. Clearly, the price fixing objected to is not price fixing by statute. If the term price fixing is applicable at all, the grievance of appellee is that it is price fixing by contract.

In connection with the problem of usury as it has been dealt with by the courts when presented in cases involving sales we commend to the court's attention an article by Raoul Berger entitled "Usury in Installment Sales" in Volume II, Law and Contemporary Problems, pages 148-172.

3. The foregoing construction of the provisions of the Act which require the parties to a retail installment contract to put the agreed price in the written contract made to evidence the sale operates as a complete avoidance of any pitfalls that may be involved in the case of an attempt to fix the price of merchandise generally. Furthermore, it is a complete answer to any contention that the right of the seller to name the price at which he may choose to sell his goods is put in jeopardy.

If objection be made to our construction of the provisions of the Act under discussion that objection is fully met by the principle that this court, in the construction of a statute will, if possible, give it that construction which is in harmony with constitutional limitations. Panama R. Co. v. Johnson, 264 U. S. 375; Crowell v. Benson, 285 U. S. 22. In the latter case, an award made under the Congressional Longshoremen's and Harbor Workers' Compensation Act was attacked on the ground that the administrative authority conferred violated the due process clause of the Fifth amendment. To the particular objection that the findings of an administrative officer were made final and not reviewable by the courts, this court replied that the statute should not be so construed because a constitutional construction was permissible. At page 62, the court said:

> "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court

will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided. We are of the opinion that such a construction is permissible and should be adopted in the instant case. The Congress has not expressly provided that the determinations by the deputy commissioner of the fundamental or jurisdictional facts as to the locality of the injury and the existence of the relation of master and servant shall be final."

4. The judgment of the General Assembly of Indiana that regulation of the business of installment selling was necessary to the prosperity and well being of its citizens is vindicated by the circumstances. The usury laws were inadequate and the state of economic development made it imperative that consumer credit be maintained on a fair basis to the consumer.

It is a matter of common knowledge that all citizens require means of obtaining money, property or service upon credit. The record is sufficient evidence of the fact in that 60% of all automobiles are sold on the installment plan. Like other products now in common use in the routine process of living the automobile has progressed from the state of a mere personal pleasure to an instrument, in many instances, of prime necessity. Suburban cities have come. Factories have removed from congested city limits with no fear for a limited labor supply. The automobile has become an integral part of the nation's transportation system.

The record demonstrates the cash means of the major portion of the families of Indiana and the imperative requirement for credit, if those families are to possess goods of a retail price of $1500 or less. There is no pretense that this Act was de-

signed to protect only small wage earners or necessitous persons whose resources frequently must be combined in order to borrow $300. On the other hand, it is not to be denied that persons of this class are the potential buying strength on which the used car, used radio and used furniture markets depend. However, persons will benefit from the protection afforded by this Act, even though they have sufficient cash means to make a down payment in an installment sale equal to $500. The beneficiaries of the intervention are those who, in the course of obtaining economic necessities and conveniences, as well as pleasures, may pledge their earnings to the payment of a debt created under a business arrangement developed to permit the extension of credit without customary limitations and devoid of the opportunity for scrutiny and comparison.

It has always been a favorite method of defeating usury laws to clothe the transaction in the form of a sale. Mutual Loan Company v. Martell, 222 U. S. 225. States have imposed limitations upon sales of wages by restricting rights of assignment and by declaring the differential between the sale price and the amount of the wage to be interest.

The facts found in the court below and summarized under Point 1 of this argument show the circumstances which moved the General Assembly to pass the challenged Act. Apart from the findings which particularly outline the manner in which retail sellers conduct sales of automobiles, the substance is that abuses exist in the business regulated and that the abuses arise out of and depend upon the sale of credit through a third party. The same abuses apparently exist in other States. They have been the subject of investigation in Wisconsin, (See Report of the State Banking Commission and Interim Advisory Legisla-

tive Committee to Investigate Finance Companies, 1935) and Massachusetts (See Report of the Special Commission Established to Investigate the Advisability of Providing for the Licensing and Regulation of the Business of Financing Purchases of Certain Personal Property, January, 1936). The device has proven so attractive that its forms have been resorted to by some banks for some loans. (See The Wall Street Journal, February 21, 1936, page 5, column 1.)

It was evident to the legislature that usury laws were inadequate to cope with the factual situation presented to it and that its power must be exercised if the evils of installment selling were to be overcome for the citizens of Indiana.

5. While not the only remedial feature of the Act, it is nevertheless true that the provisions authorizing the fixing of maximum finance charges, maximum delinquency charges and minimum discounts on prepayment as provided in sections 6 and 26 are of its very essence. It is quite important, therefore, that this right be sustained if the major purpose of the legislation is to be accomplished.

We have predicated our proposition that the provisions of the Act under consideration authorizing the fixing of maximum finance charges, maximum delinquency charges and minimum discounts on prepayment are valid on the premise that it is done in the exercise of a proper legislative purpose which is the promotion of the general welfare of the people of Indiana. Based upon that premise, the only requirement is that the means employed to accomplish the purpose be reasonable and have a substantial relation to the object sought to be attained. As said by the court in Nebbia v. People etc., 291 U. S. 502 at page 525:

> "The guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

The above provisions clearly meet this requirement. What other method more adapted to the correction of the evils found to exist in the financing through finance companies of retail installment selling could be devised than to apply the regulation to the thing in which the evil to be corrected inheres. The method employed by this Act is not only adapted to the accomplishment of the purpose of the Act but, leaving out mere details which, of course, may vary, is probably the only method which is adequate and complete. The restriction of sales of such contracts to licensees, which provision will doubtless be attacked, is obviously necessary to carry out the general purpose of the Act to limit finance charges since otherwise the corrective features of the Act would be violated with impunity.

6. Certain it is that the ordinary usury statutes are not adapted to carry out the purpose of the legislature as evidenced by said Act. The appellee in the past has manifested a spirit of smug complacency in the security found in the authorities dealing with usury statutes and retail installment sales. But these authorities prove too much and what they do not prove is as significant as what they *do* prove. First, they prove too much. They prove, if they prove anything at all, that the usury laws are impotent to cope with the evils both actual and inherently possible in modern financing of retail installment selling. Second, they *do not* prove that the usury statutes are the only available cure for such evils.

As early as Munn v. Illinois, 94 U. S. 113 at p. 133, it was said:

> "Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress."

And later, in Nebbia v. People etc., 291 U. S. 502 at page 536, after referring to numerous decisions where regulations affecting businesses of varying character were upheld, the court said:

> "It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory."

It is very true that under the authorities, the differential between what a seller may choose to sell goods for at cash and what he may choose to sell the same goods for on credit is not interest, but it does not, for that reason, follow that such charges involved in modern financing of retail installment selling,—a subject which in recent years has been under the scrutiny of at

least three legislative investigating committees and of numerous others of a more or less private character,—it does not follow that such charges, in which the public generally is so manifestly interested, may not become the subject of regulation and limitation. Modern methods of financing retail installment selling present an entirely new situation requiring an entirely new treatment in the interest of the general welfare. That is what the Act under consideration accomplishes, we insist, within constitutional limitations.

7. Nothing is better settled than that the rights of property and liberty guaranteed by the Fourteenth Amendment are not absolute but are subject to the right of the public to limit them in the common interest. The numerous decisions cited in the opinion of the court in Nebbia v. People, etc. *supra* attest the wide variety of cases to which the principle above announced applies. It applies to interest charges; (Griffith v. Connecticut, 218 U. S. 563) it applies to storage charges in public warehouses; (Brass v. North Dakota, 153 U. S. 391) it applies to fire insurance premiums; (German Alliance Insurance Co. v. Lewis, 233 U. S. 389) it applies to insurance agents' compensation; (O'Gorman & Young v. Hartford Ins. Co., 282 U. S. 251) it applies to attorney's fees in certain cases; (Frisbie v. United States, 157 U. S. 160) it applies to banking and kindred types of business; (Dillingham v. McLaughlin, 264 U. S. 370) and to many others. For other cases see the case of Nebbia v. People etc., 291 U. S. 502. Why may not the principle with equal propriety apply to finance companies engaged in the business of financing retail installment selling, if the legislature determines upon a policy of their regulation? Is it because the finance charge is not interest? Is it because it disturbs the nomenclature of "time-price"? Neither, we submit, is sufficient to deprive the state

of the right to meet the new conditions with new measures designed to advance the general welfare, and that is all this Act does. It accepts the rulings of the past; but it does not stop there. It meets the conditions of the present system with the appropriate measure to safeguard the public.

8. Sections 9, 10 and 15(d) of the Act are of the utmost importance in the consideration of the method of regulation provided by it. We will consider them somewhat analytically in our discussion of subdivision 9 of the *Summary of Argument.* Before doing so, however, we desire to state our view of the limitations of the inquiry under the present circumstances. We think it is well settled that such constitutional questions as the court will consider are those only which affect the *appellee's* rights. The court, in the determination of the question of the constitutionality of a law, will not enter into the field of speculative effects and especially where the parties to the action are not shown by the record to be affected.

Engle v. O'Malley, 219 U. S. 128;
Blair v. U. S., 250 U. S. 273 at p. 279.

9. A consideration of sections 9, 10, 11 and 15(d) of the Act are now in order. We think we are justified in saying that finance companies, foreseeing that some sort of regulation of their business is inevitable, have sought to avoid any effort to fix maximum finance charges, and one of their common arguments, other than the constitutional objection, has been the argument that such a regulation can not be enforced. Sections 9, 10, 11 and 15(d) are designed to meet that argument, and hence are attacked with all the force that can be brought to bear. Briefly stated, section 9 prevents retail sellers from selling, assigning or transferring retail installment contracts to any person other than a licensee

under the Act. This, of course, is not a limitation upon the licensed finance company but it is a limitation upon the right of the retail seller to sell his retail installment contract. We take it that the question here, as always in such cases, is: Is the limitation a reasonable one to accomplish a valid legislative purpose? We have already discussed the question as to whether the legislative purpose is a valid one and for that reason will not again discuss it here, assuming for the purpose of this argument, that such legislative purpose is valid. Upon that basis we think the limitation provided by section 9 is not only reasonable but wholly justified. In arriving at that conclusion the transaction regulated is necessarily considered as an entirety as constituting a particular method of doing business rather than separately as to its several steps. The combined relationships between the retail seller, the retail buyer and the finance company constitute a method of doing business peculiar to itself. There is involved in it the sale of merchandise, the sale of contracts, the furnishing of capital and the extension of credit. And while there is nothing in the transaction that in a strict sense can be called the loan of money, the net result or effect of it is the loan of money. There is nothing in the Act which limits the retail seller, except as to the form of the contract, if he chooses to finance his business himself. But when he chooses to use the finance company in this new device for the extension of credit he must use it within the limitations provided by the Act. The Constitution does not guarantee to the retail seller the unrestricted right to conduct his business as he pleases, Nebbia v. People etc. *supra*, and if the legislature finds in the combined methods of the retail seller and the finance company a condition detrimental to the general welfare, there is no constitutional provision which prevents a limitation reasonably

suited to remedy the evil. Mutual Loan Co. v. Martell, 222 U. S. 225. The provision of section 9 is such a limitation. There would clearly be no efficacy in providing for the licensing of finance companies if retail sellers could, with impunity, sell to an unlicensed company; and without the licensing provision of section 11, enforcement would be impossible.

Section 10 provides, among other things, that any licensee may purchase any retail installment contract on such terms and conditions not inconsistent with the provisions of the Act and at such price and upon such terms as to the payment of the price as may be agreed upon between the licensee and the retail seller. The portion, however, to which objection is made is the portion which provides that:

> "No licensee shall enter into any agreement with any retail seller regarding the purchase of any retail installment contract whereby the retail seller shall receive, directly or indirectly, any benefit from or part of any amount collected or received from any retail buyer, as a finance charge or as the cost of the insurance to the retail buyer, in excess of an amount fixed and determined by the department and no licensee shall directly or indirectly pay any part of the amount collected as a finance charge or retail buyer's cost of insurance to any retail seller on any retail installment contract purchased from him in excess of the amount so fixed; and the department shall fix such maximum amount which may be so paid but without regard to any differentiation as to whether the retail installment contract is sold to the licensee with recourse on the seller in the event of the default of the buyer or without such recourse or

under an agreement by which the seller agrees to repurchase the specific goods described in the retail installment contract if such buyer in such contract defaults and such goods are repossessed."

It is recognized that there is a certain loss hazard in retail installment selling and that the item designated "reserve" as a part of the finance charge is a legitimate item when limited to the reasonable requirements to meet such hazard. On the other hand, it is believed to be clear that the retail seller should realize his profit from the merchandising transaction *only*, and that the finance company should receive all profits derived from the financing transaction. In the past these reserves included in the finance charge depending upon the method of operation have usually been sufficiently large to enable the finance company to return a part of it to the retail seller in some form of "dealer participation," which has been used as a bargaining item of the finance company for the dealer's business, *at the expense of the retail buyer*. As we have said, a "reserve" for losses is a legitimate item to be taken into consideration in fixing a finance charge whether fixed by the unregulated finance company or by some public agency authorized to fix it; but when it becomes too large as fixed by the unregulated finance company it becomes one of the abuses to correct which the Act under consideration was passed. It was necessary, therefore, to authorize the Department to fix maximum loss reserves which might be allowed in the final analysis to the finance company or to the retail seller according to their respective interests.

The objection that this item must be fixed without regard to any differentiation as to whether the retail installment contract is sold to the licensee with recourse or without recourse is with-

out any merit since the amount to be fixed is a maximum sufficient to meet any type of contract between the retail seller and the licensee, leaving the reserve to be divided between the retail seller and the finance company according to their agreement based upon their respective liabilities.

Section 15(d) deals with the grounds for revocation of licenses of licensees. It provides as follows:

> "The department is hereby authorized to revoke or suspend any license issued under this act, if, after hearing, it finds:
>
> * * *
>
> (d) that the licensee has wilfully avoided or attempted to avoid the operation or effect of this act by purchasing any retail installment contract or contracts at a less price than the unpaid balance thereon or by entering into any agreement, combination or understanding (,) expressed or implied (,) with any retail seller the effect of which agreement, combination or understanding may be to avoid or attempt to avoid the operation or effect of this act.
>
> The department shall give any licensee whose license it proposes to revoke ten days' notice in writing of the contemplated action and of the general grounds therefor. Before the license is revoked or suspended, the licensee shall be given reasonable opportunity to be heard. Licensee (license) may be revoked or suspended only by written order. If the department finds that the grounds for revocation or suspension of the license are applicable only to one branch or some branches operat-

ed by the licensee, it may revoke or suspend the license as to that branch or those branches only, or it may revoke the right of the licensee to do business as a licensee in this state. No revocation or suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract theretofore made."

It seems to us that this provision and section 11 are not objectionable and are reasonably necessary to carry out the purpose of the Act. It does not forbid the purchasing by licensees of retail installment contracts at a less price than the unpaid balance. It is only where the licensee has wilfully avoided or attempted to avoid the provisions of the Act by so doing that this is a ground for revocation of a license. The provision is not designed to restrict or limit the right of contract between the retail seller and the finance company as expressly provided in section 10 of the Act, and to which reference has already been made, but where the device of buying at a less price than the unpaid balance is used to violate the provisions of the Act and the regulations of the Department of Financial Institutions fixing maximum finance charges which may be contracted for, it then becomes a ground for revocation of license. In other words, the device of buying for less than the unpaid balance can not lawfully be used as a means of increasing the maximum finance charge *which the retail buyer must pay* and in whose interest the fixing of a maximum finance charge is made, and when the Department finds that has been done, it may, after a hearing, revoke or suspend the license of the offending licensee. But except for that, the Department has no interest so far as the above provision is concerned in the contract between the *retail seller* and the licensee. The limitation, therefore, is not unreasonable and is simply for the purpose of preventing the

charging against the retail buyer by indirection of a finance charge which could not be charged against him directly.

IN CONCLUSION.

In the absence of a written opinion by the lower court showing specifically the provisions of the Act upon which the decision is based, we have had some difficulty in determining the exact scope of the inquiry. We have, however, sought to discuss those provisions which might conceivably bear upon the question of due process, the ground stated in the conclusions of law as the basis for the decree. Any summary of the discussion would be of little value unless the same be somewhat extended, and an extended summary would necessarily be a restatement of much that has already been stated. For that reason we will not attempt a summary, contenting ourselves with a simple outline.

First. The facts abundantly show that retail installment selling and the extension of credit involved therein through the instrumentality of selling retail installment contracts to finance companies is a proper subject of regulation under the police power of the State.

Second. The challenged Act in recognition of the futility of any attempt to shape usury statutes so as to effectually regulate such business, adopted the plan of providing for the fixing of maximum finance charges, which bears a similar relation to the established method of financing retail installment sales as interest bears to the forebearance of money, upon such a basis as would protect the retail installment buyer from unreasonable prices for credit in addition to providing for a disclosure of such charges and their several items and upon such a basis as

would insure sufficient capital for the purpose of supplying such credit.

Third. The method adopted by the General Assembly of Indiana is reasonably adapted to the purpose of the Act and is not arbitrary or capricious.

Fourth. The classifications made by the Act are reasonable and not subject to constitutional objection.

Fifth. The limits of and basis for the exercise of power by the Department of Financial Institutions is sufficiently definite to meet any constitutional objections and its actions are expressly made subject to judicial review.

Sixth. The Act challenged does not violate the Fourteenth Amendment.

For the foregoing reasons it is respectfully submitted that this cause should be reversed.

Respectfully submitted,

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APPENDIX "A".

CHAPTER 231.

(H. 377. Approved March 11, 1935.)

AN ACT to license and regulate and to promote competition in the business of purchasing contracts arising out of retail installment sales, to prescribe the form of such contracts, to empower the department of financial institutions to classify retail installment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail installment sales.

SECTION 1. Definition of Terms.—*Be it enacted by the general assembly of the State of Indiana,* That in this act, unless the context or subject matter otherwise requires:

The term "retail installment sale," or the plural thereof, means and includes every retail contract to sell specific goods and every retail sale of specific goods to any person:

(a) In which the cash price of the goods is not in excess of $1,500, and may be paid in installments over a period of time, and,

(b) In which the seller has taken or retained a security interest in the goods.

The term "person" includes a corporation or partnership or (of) two or more persons having a joint or common interest.

The term "goods" includes all chattels personal other than money, things in action, emblements, industrial growing crops, things so affixed to the land as to become a part thereof, or

things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The term "specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

The term "retail" means to dispose of specific goods to, or to acquire specific goods by, a person who may consume such goods for his personal use.

The term "buyer" means a person who buys or agrees to buy goods, or any legal successor in interest of such person.

The term "retail buyer" means a buyer who is a party to a retail installment sale, or any legal successor in interest of such person, and includes any person who as surety, indorser or guarantor or otherwise is liable on the obligation created by any retail buyer on any retail installment contract.

The term "seller" means a person who sells or agrees to sell goods.

The term "retail seller" means a seller who is a party to a retail installment sale.

The term "cash price" means the price, measured in dollars, agreed upon in good faith by the parties for the specific goods which are the subject matter of any retail installment sale.

The term "retail installment contract" means any written instrument, lawful under this act, which is executed in connection with any retail installment sale and is required by section 2 hereof or is authorized by section 3 hereof, and the term may include all such instruments executed in connection with any retail installment sale.

The terms "contract to sell," "sale" and "conditional sale" shall have the same meaning in this act as they are respectively defined in the Uniform Sales Act and Uniform Conditional Sales Act.

The term "conditional sales contract" means any written instrument evidencing a conditional sale.

The term "bank or trust company" means any national banking association formed under the laws of the United States with its principal office located in this state and doing business herein and any bank or trust company, any bank of discount and deposit, loan and trust and safe deposit company or trust company organized and doing business under the provisions of any law of this state.

The term "department" means "The Department of Financial Institutions."

The term "manufacturer" means a person who is engaged, directly or indirectly, in the manufacture or distribution of specific goods which may become the subject matter of a retail installment sale in this state.

The term "finance charge" means any consideration which the retail buyer contracts to pay the retail seller for the privilege of paying the principal balance in installments over a period of time.

The term "security interest" means a property interest in goods which are the subject matter of a retail installment sale, limited in extent to securing performance of some obligation of the retail buyer or of some third person to the retail seller and includes the interest of a mortgagee of the goods and the title

to the goods whether or not expressed to be absolute, whenever such title is, in substance, retained for security only.

SEC. 2. Written Instrument.—Every retail installment sale shall be evidenced by an instrument in writing signed by the retail buyer, and a copy thereof shall be delivered to him by the retail seller at the time of its execution. An acknowledgment of the delivery thereof contained in the body of the instrument shall be conclusive proof of delivery in any action to enforce any obligation arising out of the retail installment sale. The written instrument shall contain all of the agreements of the parties made with reference to the specific goods which are the subject matter of the retail installment sale, and shall set forth specifically all items and matters required by this act. The reference to insurance shall recite generally the type or types of insurance the retail seller has agreed to procure for the retail buyer but such reference to insurance shall not be construed to imply the scope of the coverage, the terms, exceptions, limitations, restrictions or conditions of the contract or contracts of insurance to be furnished. Nothing in this act shall be construed to require the retail seller to comply with the provisions hereof at any time prior to the delivery of the specific goods to the retail buyer.

SEC. 3. Retail Installment Contracts.—Any retail seller may require any retail buyer to execute and deliver a promissory note to evidence the indebtedness created by any retail installment sale, and, to secure the payment of the indebtedness created by the sale or evidenced by the promissory note or to secure the performance of any other condition of the sale, may require the retail buyer to execute and deliver a conditional sale contract, chattel mortgage or other instrument to give the retail

seller a security interest in the specific goods which were the subject matter of the retail installment sale. A written instrument required by section 2 hereof may evidence a conditional sale.

SEC. 4. Provisions of Written Instruments.—Every written instrument evidencing a retail installment sale shall recite the following separate items as such and in the following order:

(1) The cash price of the specific goods.

(2) The amount in cash of the retail buyer's down payment, whether made in money or goods or partly in money or partly in goods.

The term "down payment" for the purpose of this section, shall mean that part payment of the cash price required by the retail seller as a condition to the delivery of the specific goods sold or to be sold or to the extension of credit to the retail buyer for any portion of the cash price.

(3) The unpaid balance of the cash price payable by the retail buyer to the retail seller which is the difference between items (1) and (2).

(4) The cost to the retail buyer of any insurance the retail buyer has agreed to procure, if the retail seller has agreed to purchase the insurance and extend credit to the retail buyer for the price thereof.

(5) The principal balance owed on the retail installment contract which is the sum total of items (3) and (4).

(6) The amount of the finance charge.

(7) The time balance owed by the retail buyer to the retail seller and the number of installment payments required and

the amount and date of each payment necessary finally to pay the time balance which is the sum total of items (5) and (6).

Item (4) and item (6) may be added together and stated as one sum in the written instrument and if so stated item (5) may be omitted, but in such event the retail seller shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract a statement reciting the separate amounts of items (4) and (6).

SEC. 5. The Insurance.—Any retail seller who, in any retail installment contract, has agreed to purchase insurance for the retail buyer and to extend credit for the price thereof, shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract, a policy or policies of insurance or in lieu thereof a certificate briefly describing the protection afforded by the insurance procured, and the kind and amount thereof. If the premium for insurance of like kind and amount, as fixed in the published manual of a recognized standard rating bureau designated by the retail seller, is less than the amount charged the retail buyer as fixed in the written instrument in compliance with item (4) of section 4 hereof, the retail buyer may deduct an amount equal to the difference from the amount of the last payment owed the retail seller. If, before the sale, assignment or transfer of the retail installment contract, the retail seller has not purchased the insurance for the retail buyer which the former, under the terms of the retail installment contract, is required to purchase, any licensee hereunder who becomes the owner, assignee or transferree of the retail installment contract shall, within twenty-five days after the execution of the

assignment, purchase the insurance and mail the policies or certificates, instead of the retail seller as required above, and may, subject to the provisions of this section, collect and receive the amount of the cost thereof which was included as a part of the principal balance on the retail installment contract.

SEC. 6. The Finance Charge and Prepayment.—Subject to the provisions of this act, any retail seller at the time of making any retail installment sale may contract for the payment of a finance charge by the retail buyer and collect and receive the same. The finance charge contracted for in any retail installment contract may not exceed the maximum finance charge then authorized by the department as in this act provided. Every retail buyer shall have the right, at any time, to pay the then unpaid time balance owed on any retail installment contract, whether then due or not, and upon payment thereof, any holder of the retail installment contract shall reduce the amount of the then unpaid time balance by the amount fixed and determined in accordance with the regulations of the department in force as of the date of the making of the particular retail installment contract and applicable to such cases. The reduction herein authorized may be known as a discount and every retail buyer, upon full prepayment of any unpaid time balance owed by him on any retail installment contract, shall receive the discount but only in the amount, at the times and upon the conditions provided herein. The department shall and is hereby authorized to fix and determine the amount of any discount to be given for prepayment as in this section authorized but no such discount shall be for an amount in excess of the amount of the finance charge on any particular retail installment contract.

Every retail seller may, at the time of making any retail

installment sale, contract for the payment by the retail buyer of lawful delinquent charges for failure to pay any installment of the time balance on the date specified in the retail installment contract, and any retail seller or any lawful holder of a retail installment contract in which delinquent charges are contracted for may collect and receive the charges lawfully contracted for.

SEC. 7. Limitation on Amount of Debt and Charges.—No retail installment contract authorized by section 3 of this act which is executed in connection with any retail installment sale shall evidence any indebtedness in excess of the time balance fixed, in the written instrument in compliance with item (7) of section 4 of this act, but it may evidence in addition, any agreements of the parties including agreements for the payment of delinquent charges, taxes and fees, including attorney's fees. No retail seller, directly or indirectly, shall contract for or receive from any retail buyer, as consideration for the extension of credit to the retail buyer for the amount of the principal balance, any further or other amount whatsoever for examination, service, brokerage, commission, expense, fee or other thing of value than the finance charge, charges and fees permitted by this act, taxes on account of any retail installment contract or on specific goods sold thereunder and any lawful fees actually paid out by the retail seller to any public officer for filing or recording or releasing any instrument securing the payment of the obligation owed on any retail installment contract. The lawful fees may be collected when the retail installment contract is made or at any time thereafter, but may not be included in the principal balance fixed in the written instrument in compliance with item (5) of section 4 hereof.

SEC. 8. Limitation on Recovery and Enforcement of Lien.—

No retail installment contract which evidences an indebtedness greater than allowed by section 7 hereof and no retail installment contract in connection with which any charge prohibited by this act has been contracted for or received shall be enforceable against any retail buyer for any amount in excess of the principal balance thereof and no security interest created by any such retail installment contract in connection with which an indebtedness is evidenced which is greater than allowed by section 7 hereof or in connection with which any charge prohibited by this act has been contracted for or received shall be enforceable for an amount in excess of the principal balance against any retail buyer in default under the terms of the retail installment contract.

SEC. 9. Limitation on Assignment of Contracts.—Except as in this section otherwise provided, every retail installment contract shall be assignable and the interest therein transferable to any person or persons. No retail seller may sell, assign and transfer any retail installment contract to any person other than a licensee under this act. Any retail installment contract which is or has been owned by a licensee may be enforced and collected by the holder thereof according to its lawful terms.

SEC. 10. Purchase of Retail Installment Contracts.—Any licensee hereunder may purchase any retail installment contract on such terms and conditions not inconsistent with the provisions of this act, and at such price and upon such terms as to the payment of the price, as may be agreed upon between the licensee and the retail seller. The records of the licensee shall show the price actually paid for retail installment contracts separately assigned to such licensee but retail installment contracts may be assigned in group or in bulk to any licensee as may from

time to time be authorized by the department by regulation without disclosing the purchase price of the individual retail installment contracts. The department is authorized to make regulations from time to time concerning the purchase by licensees of retail installment contracts in group or in bulk and any purchase of such retail installment contracts made within the terms of the regulations shall not be construed as an attempt to avoid the operation and effect of this act.

No licensee shall enter into any agreement with any retail seller regarding the purchase of any retail installment contract whereby the retail seller shall receive, directly or indirectly, any benefit from or part of any amount collected or received from any retail buyer, as a finance charge or as the cost of the insurance to the retail buyer, in excess of an amount fixed and determined by the department and no licensee shall directly or indirectly pay any part of the amount collected as a finance charge or retail buyer's cost of insurance to any retail seller on any retail installment contract purchased from him in excess of the amount so fixed; and the department shall fix such maximum amount which may be so paid but without regard to any differentiation as to whether the retail installment contract is sold to the licensee with recourse on the seller in the event of the default of the buyer or without such recourse or under an agreement by which the seller agrees to repurchase the specific goods described in the retail installment contract if such buyer in such contract defaults and such goods are repossessed.

The provisions of this section shall not apply to any bona fide loan made to any retail seller which the retail seller is under an unqualified duty to repay as such, and which he has secured as to payment, by the sale, assignment, or transfer of retail installment contracts to the lender.

SEC. 11. Licensees.—No person shall purchase retail installment contracts from a retail seller doing business in this state or engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or trust company, make loans to a retail seller doing business in this state on the security of retail installment contracts or engage in the business of making loans to retail sellers in this state on the security of retail installment contracts unless the department has licensed such person to do such business and has issued to the person a written instrument evidencing the license as in this act provided. Any person who desires to purchase retail installment contracts from retail sellers doing business in this state or to engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or a trust company, to make loans to retail sellers doing business in this state on the security of retail installment contracts or to engage in the business of making loans to retail sellers doing business in this state on the security of retail installment contracts, shall file an application for a license on forms prescribed by the department and pay the fees required herein.

SEC. 12. Application for License and Fees.—The application for license shall contain:

(a) the name and address of the principal office of the applicant,

(b) if applicant has one or more branches operating in this state, the place of business of each such branch at the date of the application,

(c) the trade name, if any, under which applicant's business is to be conducted, and if applicant is a co-partnership, the

name of every member thereof, and if a corporation, of each officer and director thereof,

(d) the total authorized investment used or to be used in the business in this state and if a corporation, the amount of the capital stock thereof issued and outstanding,

(e) a statement of the total amount of business transacted by it in this state during the fiscal year next preceding the date of the application,

(f) such other information touching the business of the applicant as the department may require.

The department is hereby authorized to prescribe the forms of the application and require such additional information as to it may seem necessary properly to regulate the business of the licensee. The forms prescribed shall require the applicant to agree to give notice to all retail sellers in this state with which it does business, when requested so to do by the department, of any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance charges as provided in section 26 of this act and to keep in this state, subject to examination, adequate records pertaining to the business done in this state.

The application shall be verified by the proper person and every applicant, other than a bank or trust company or an industrial loan and investment company authorized to issue certificates of indebtedness or investment, shall pay the department the sum of one hundred dollars as an annual license fee at the time of the filing of the application. Any bank or trust company or industrial loan and investment company authorized to issue certificates of indebtedness or investment which

shall apply for a license under this act shall pay the department the sum of ten dollars as an annual license fee at the time of filing of the application. If the period for which the license is to run is less than six months (,) one-half of the annual fee shall be charged. On or before the 20th day of June in each year every licensee shall pay the department the annual license fee provided herein for such licensee for the year commencing on the next succeeding July 1 and shall file an application in the form prescribed by the department. All license fees collected by the department shall be paid into the state treasury and become a part of the financial institution's fund and subject to the provisions of law relating thereto.

SEC. 13. Approval or Rejection of Application.—Upon the filing of any application for license and the payment of the license fee required by this act, if the department shall find that the applicant can operate its business economically and efficiently, it shall thereupon issue and deliver a license to the applicant. In considering economic and efficient operation the department shall take into consideration the fact that this act is designed to promote competition between licensees for the benefit of the class of retail buyers within its scope. The license shall authorize the applicant to do the business otherwise prohibited by this act. The license shall remain in full force and effect until it is surrendered, revoked or suspended as in this act provided. If the department shall find that the applicant cannot operate its business economically and efficiently within the scope of this act, it shall not issue a license to the applicant but shall notify the applicant of the denial, and return to the applicant the fee theretofore paid. The department shall give every applicant a reasonable opportunity to be heard with respect to the application, and shall approve or deny, by written

order, every application for license hereunder within thirty days from the hearing thereon.

SEC. 14. Form of License.—The instrument evidencing the license shall be in such form as may be prescribed by the department, and in addition thereto shall contain the following:

(a) the name of the person licensed,

(b) the name of all partners if applicant is a co-partnership,

(c) the principal office of the applicant.

The instrument evidencing the license, or a certified copy thereof provided by the department, shall be kept posted conspicuously in the principal office of applicant and in every branch maintained and operated by applicant in this state.

SEC. 15. Revocation of License.—The department is hereby authorized to revoke or suspend any license issued under this act, if, after hearing, it finds:

(a) that the licensee has refused to permit the department to make any examination authorized hereunder or has failed to pay the cost of any examination made by the department or the annual license fee required hereby or any penalty assessed by the department against the licensee, or

(b) that the licensee has wilfully failed to comply with any rule or regulation of the department lawfully made hereunder, or

(c) that the licensee has wilfully violated any provision of this act, or any rule or regulation of the department lawfully made hereunder, or

(d) that the licensee has wilfully avoided or attempted to avoid the operation or effect of this act by purchasing any retail installment contract or contracts at a less price than the unpaid balance thereon or by entering into any agreement, combination or understanding (,) express or implied (,) with any retail seller the effect of which agreement, combination or understanding may be to avoid or attempt to avoid the operation or effect of this act.

The department shall give any licensee whose license it proposes to revoke ten days' notice in writing of the contemplated action and of the general grounds therefor. Before the license is revoked or suspended, the licensee shall be given reasonable opportunity to be heard. Licensee (license) may be revoked or suspended only by written order. If the department finds that the grounds for revocation or suspension of the license are applicable only to one branch or some branches operated by the licensee, it may revoke or suspend the license as to that branch or those branches only, or it may revoke the right of the licensee to do business as a licensee in this state. No revocation or suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract theretofore made.

SEC. 16. Recourse to Court.—Any person feeling aggrieved with any decision of the department made as in this act provided may commence an action in the circuit or superior court of the county in which the business operated by such person is located against said department as defendant to vacate or set aside any such order or decision of the department upon the grounds that any such regulation, order or decision of the department is insufficient, unreasonable or unlawful, in which ac-

tion a copy of the complaint shall be served with the summons. The answer of the department to the complaint shall be filed within ten days after service of summons. All such actions shall have precedence over civil cases not of the same nature pending in any such court and such circuit or superior court shall always be deemed open for the trial thereof and the same shall be tried and determined as other civil actions.

Any such proceeding, action or suit to set aside or vacate any decision or order of the department or to prevent in any way such order or decision from becoming effective shall be commenced and every right of recourse to the courts shall be exercised within thirty days after the entry or rendition of such order or decision and the right to commence any such action, proceeding or suit or to exercise the right of any recourse to the courts shall terminate absolutely at the end of such thirty days after such entry or rendition thereof. Either party to any such action in the circuit or superior court shall have a right of appeal to the supreme court of the State of Indiana, as in other civil cases.

SEC. 17. Surrender of License.—Any licensee hereunder may surrender any license theretofore issued to it by the department at any time after ten days' notice to the department in writing stating that the licensee proposes to and does thereby surrender the license as of a certain effective date named. The surrender of a license by a licensee shall not affect the civil or criminal liability or liability for fees or penalties which the licensee may be under by virtue of any act done prior to the surrender of the license.

SEC. 18. Reports of Licensees.—Every licensee hereunder

shall annually on or before the 15th day of March file a report with the department giving such relevant information as the department may require concerning the business and operation of the licensee in this state during the preceding calendar year. The report shall be made under oath and in the form prescribed by the department.

SEC. 19. Examination of Licensees.—The department may at any time investigate the business done in this State by any licensee hereunder, and for that purpose examine the books, accounts, records and files used and maintained by such licensees and their agents, brokers or other representatives. The department may also investigate the business of any person who is not a licensee hereunder and who is doing any business or act, the doing of which is prohibited hereby to persons other than licensees or banks or trust companies. For the purpose of discovering violations of this act and procuring information necessary to fix a maximum finance charge applicable to retail installment contracts, the department in making investigations authorized by this section shall have access to all books, accounts, papers, records, files, safes and vaults of any persons being examined, and may require such persons to attend and testify relative to any transactions or business which may come within the scope of this act. In case of the disobedience on the part of any person to comply with any lawful order of the department or any lawful subpœna, or upon the refusal of any witness to appear and testify to any matter regarding which he may be lawfully interrogated, upon petition of the department setting forth the facts, it shall be the duty of the circuit or superior court of the county of which such person is a resident, or the judge thereof in vacation, to compel obedience to the lawful requirements of the subpœna or order and to compel the

production of necessary and required books, papers, records, documents and other evidence, and upon the failure, refusal or neglect of any person to comply with the order of the court or the judge thereof, such person shall be punished as for contempt of court.

SEC. 20. Costs of Examination.—The department shall prescribe and fix a schedule of fees, which are hereby imposed and shall be charged and collected by the department, for the services rendered and the duties performed by the department, under and by virtue of the provisions of this act in the supervision, regulation and examination of licensees hereunder and the schedule of fees so prescribed and fixed shall be determined in accordance with the provisions of section 35 of the Indiana Financial Institutions Act. For the purposes of this section a licensee hereunder shall be termed a financial institution. The fees fixed and prescribed in the schedule may include the cost incurred by the department in fixing a finance charge under the provisions of this act. No licensee shall be required to pay any fee for examination unless the cost to the department of making such examination shall exceed the license fee paid in compliance with the provisions of this act. All costs assessed by the department at the time of the making of any examination and paid by the licensee shall be paid into the State treasury and become a part of the financial institutions fund and subject to the provisions of law relating thereto. If any licensee refuses to permit the department to make an examination it shall be subject to such penalty as the department may assess, not in excess of one hundred dollars for each day any such refusal shall continue. Any penalty assessed by the department may be collected in an action brought in the name of the State of Indiana on the relation of "The Department of Financial Institutions" in the

circuit or superior court of the county in which the licensee has its principal place of business.

SEC. 21. Contracts to Prevent Competition.—No manufacturer shall sell or contract to sell specific goods which may become the subject matter of a retail installment sale in this State, whether patented or unpatented, to any retail seller in this State on the condition or with an agreement or understanding, express or implied, that the retail seller shall sell, assign or transfer any retail installment contracts arising from the retail installment sales of the goods, or any part thereof, only to a designated licensee or class of licensees, when the effect of the condition, agreement or understanding may be to lessen or eliminate competition, or create, or tend to create, a monopoly in the licensee or class designated. Any such condition, agreement or understanding with any retail seller in this State is hereby declared to be against the public policy of this State and to be unlawful and void.

SEC. 22. Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly, to any retail seller in this state by any manufacturer that the manufacturer will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell, specific goods which may become the subject matter of a retail installment sale in this state, whether patented or unpatented, to the retail seller, unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to any designated licensee or class of licensees, shall be prima facie evidence that the manufacturer has sold or intends to sell such specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

SEC. 23. Further Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly to any retail seller in this state by any licensee hereunder that is affiliated with or controlled by any manufacturer that the manufacturer will terminate his contract with or cease to sell specific goods which may become the subject matter of a retail installment sale to the retail seller unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to the licensee making the threat, shall be presumed to be made at the direction of and with the authority of the manufacturer and shall be prima facie evidence of the fact that the manufacturer has sold or intends to sell the specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

SEC. 24. Subsidy of Licensees.—No manufacturer shall pay or give or contract to pay or give any thing or service of value to any licensee in this state, and no licensee in this state shall accept or receive or contract or agree to accept or receive, directly or indirectly, any payment, thing or service of value from any manufacturer, if the effect of the payment or giving of any such thing or service of value by the manufacturer, or the acceptance or receipt thereof by the licensee, may be to lessen or eliminate competition or tend to create or create a monopoly in the licensee that accepts or receives the payment, thing or service of value or contracts or agrees to accept or receive the same.

SEC. 25. Rules and Regulations.—The department shall have authority from time to time to make, amend and rescind rules and regulations necessary to carry out and enforce the provisions of this act, including rules and regulations governing the

business done in this state by licensees, the content of reports required from licensees and the manner and extent of examinations made of the business of licensees. Among other things, the department shall have authority to prescribe forms in which required information shall be set forth, items or details to be shown in balance sheets and earning statements and methods to be followed in the preparation of accounts necessary to reflect factors in the business of the licensee to be reckoned with by the department when fixing a maximum finance charge on retail installment contracts. The rules and regulations of the department, other than those issued pursuant to the authority vested in the department by section 26 of this act, shall be published and be effective in the manner and at the time prescribed by the department. No provision of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the department, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

SEC. 26. Classification of Retail Contracts and Variable Finance Charges.—It shall be the duty of the department and the department shall have power, jurisdiction and authority to investigate retail installment contracts and ascertain the facts with reference to retail installment sales and upon the basis of the ascertained facts:

(a) to classify, by general order, retail installment sales or retail installment contracts arising therefrom, according to such system of differentiation as may reasonably distinguish the classes of retail installment sales or the contracts made in connection with such sales, and

(b) to determine and fix by a general order the fair maximum finance charge that may be contracted for in any retail installment contracts or that may be contracted for in retail installment contracts of any classes which may be established by the department, and

(c) to determine and fix by a general order the fair maximum charges that may be contracted for in any retail installment contract and which may be imposed upon the retail buyer for failure to pay any installment of the time balance when it is due.

The department, in determining the classes of retail installment sales or contracts, shall take into consideration the specific goods sold thereunder, the use thereof, the length of time usually given to the retail buyer in which to pay the unpaid balance owing on any retail installment contracts made in connection with the sales and any other factors which may reasonably afford a basis for the application of different finance charges on retail installment contracts which have or are likely to have the same or substantially the same unpaid balances.

The department, in determining the fair maximum finance charge which may be contracted for in any retail installment contracts or in any retail installment contracts of any classes which may have been established by it, shall take into consideration the availability of credit facilities to individuals who do not have the security generally required by commercial banks and the finance charge which will be necessary in order to induce sufficient amounts of efficiently operated commercial capital to enter into the business of making and purchasing retail installment contracts. The department shall fix charges sufficient

to provide adequate credit facilities for retail installment sales.

The department may, from time to time, upon the basis of changed conditions or facts, reclassify retail installment sales and retail installment contracts, and redetermine and refix any maximum finance charge previously fixed by it, but the new finance charge shall not affect pre-existing retail installment contracts lawfully made. Any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance charges shall fix the effective date of the new or changed classification or finance charge, but the effective date shall not be earlier than thirty days after the date when notice of such new or changed classification or finance charge is published. Notice to the public, to retail sellers and to licensees hereunder shall be given by publication of the new or changed classification or finance charge by one publication in a daily newspaper of general circulation printed and published in the English language in the city of Indianapolis. In addition, the department may require licensees hereunder to give notice of such new or changed classification or finance charge to all retail sellers with whom the licensees do business in this state.

Any finance charge fixed by the department under the provisions of this act shall be lawful notwithstanding any other law of this state.

SEC. 27. Duty of Retail Seller and Licensee.—Every person to which this act is applicable shall conduct and transact his business in the manner required hereby and every licensee hereunder shall establish and maintain methods for the conduct of his business and affairs coming within the scope of this act in accordance with the requirements hereof and of any rule or reg-

ulation of the department made in relation thereto and under the authority of this act.

SEC. 28. Waiver of Statutory Protection.—No agreement of any retail buyer before or at the time of the making of any retail installment contract shall constitute a valid waiver of any provisions of this act.

SEC. 29. Violation of Act—Punishment.—Any person who wilfully violates any of the provisions of this act, or the rules and regulations promulgated by the department under the authority hereof or any person who wilfully in any report or account filed in pursuance of any provision of this act or rule or regulation of the department makes any untrue statement of a material fact or omits to state any material fact necessary to give the department the information lawfully required by it, shall upon conviction, be fined not more than one thousand dollars or imprisoned not more than one year or both.

SEC. 30. Interpretation.—This act shall be interpreted and construed in connection with and as supplemental to the Uniform Sales Act, as amended, and the Uniform Conditional Sales Act and any terms used in this act which are defined in either of said acts shall have the meaning given thereto by the aforementioned acts unless the context hereof clearly requires another meaning. Nothing in this act shall be construed to repeal any part of either of the acts mentioned in this section or any existing law of this state relating to interest or consideration that may be charged upon the loan, use or forbearance of money or sale of credit, but this act shall be construed as supplemental thereto.

SEC. 31. Existing Contracts.—None of the provisions of this act shall apply to any sale or to any contract to sell made prior

to the taking effect of this act which if made after this act takes effect would be a retail installment sale or contract and this act shall not affect pending litigation.

SEC. 32. Captions.—No caption of any section of this act shall in any way affect interpretation of this act or any part thereof.

SEC. 33. Severability Clause.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SEC. 34. Short Title.—This act may be cited as the Retail Installment Sales Act.

SEC. 35. Time of Taking Effect.—This Act shall take effect on the first day of July, 1935.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 710

PAUL V. McNUTT, Governor of the State of Indiana; PHILIP LUTZ, Attorney General of Indiana; RICHARD A. McKINLEY, Director of The Department of Financial Institutions of the State of Indiana; OSCAR P. WELBORN, HARVEY B. HARTSOCK, C. M. SETSER, MYRON GRAY and ROBERT BATTON, Members of the Commission of Financial Institutions of the State of Indiana; HERBERT M. SPENCER, Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana,

Appellants,

v.

McHENRY CHEVROLET CO., INC.,

Appellee.

MEMORANDUM RE JURISDICTION

JOHN THOMAS SMITH,
PHILLIP W. HABERMAN,
DUANE R. DILLS,
ANTHONY J. RUSSO,
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Counsel for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

PAUL V. MCNUTT, Governor of the State of Indiana;
PHILIP LUTZ, Attorney General of Indiana;
RICHARD A. MCKINLEY, Director of The Department of Financial Institutions of the State of Indiana;
OSCAR P. WELBORN, HARVEY B. HARTSOCK, C. M. SETSER, MYRON GRAY and ROBERT BATTON, Members of the Commission of Financial Institutions of the State of Indiana;
HERBERT M. SPENCER, Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana,
Appellants,

v.

MCHENRY CHEVROLET CO., INC.,
Appellee.

No. 710

MEMORANDUM RE JURISDICTION

I

THE RECORD ESTABLISHES THAT THE MATTER IN CONTROVERSY EXCEEDS, EXCLUSIVE OF INTEREST AND COSTS, THE SUM OR VALUE OF $3,000.

A. Although Defendants denied the allegation in the complaint that the matter in controversy exceeds the sum of $3,000 in value, the Record is barren of any evidence in support of their denial: Defendants, therefore, failed to sustain the burden, which is theirs, of defeating jurisdiction.

The Complaint alleges, in paragraph Second, that the matter in controversy exceeds the sum of $3,000 in value,

exclusive of interest and costs (McHenry Record, p. 2). Appellants denied this allegation (McHenry Record, p. 32).

In support of the general jurisdictional allegation Appellee alleged the following specific facts which were either included in the Special Findings of Fact or not questioned by Appellants (paragraphs Third, Fifth, Twelfth, McHenry Record, pp. 2, 3, 6 and 7 and Findings 1, 2 and 3, McHenry Record, pp. 47-49): The net worth of Appellee's business is in excess of $3,000; it has on hand 22 new cars and 29 used cars having a combined value of approximately $16,000; in the five months expiring May 31, 1935, it sold 481 new and used automobiles the aggregate retail prices of which amounted to approximately $164,000; a substantial majority—about 65% during the first five months of 1935—of its sales consisted of instalment or time sales; based on orders and prospects on hand and other criteria commonly employed to forecast future sales, it expects to sell approximately 330 cars in June and July of 1935 and 495 cars during the second six months of the year 1935.

In further support of the general jurisdictional allegation the Complaint proceeds in paragraphs Thirteenth and Fourteenth (McHenry Record, pp. 7-8) to set forth the following allegations, all of which were supported by evidence introduced by Appellee in the Trial Court: That the present and future earnings of Complainant and the conduct of its business will be rendered uncertain by reason of the risk involved in making future commitments for the purchase of automobiles and the inability to obtain future commitments not only for resale of such automobiles, *but also commitments for the $16,000 of cars on hand;* that Appellee will be unable to obtain commitments for the sale of retail instalment contracts covering the $16,000 of cars on

hand, as well as cars which might be ordered, either to G. M. A. C., or any other finance company; that Appellee will be restricted in selling its instalment contracts to those parties only who may be able to receive a license from the Department of Financial Institutions; that Appellee will be required to discontinue the use of forms and contracts presently in use, to prepare and use new contract forms, and to mail statements to retail buyers and any endorsers and guarantors of retail buyers and insurance policies or certificates to retail buyers, as required by Sections 4 and 5 of the Act; that Appellee will be restricted in selling its instalment contracts as to the amount which it may receive out of the "finance charge" received from retail buyers under instalment sale contracts, and in the amount of such "finance charge" which Appellee may receive upon selling such contracts *with recourse* or pursuant to a repurchase agreement, as contrasted with the amount which it may receive upon the sale of such contracts *without recourse* (Section 10 of the Act; Record pp. 16-17)—thereby depriving Appellee of the right to sell its paper for a higher price, by pledging its own credit in support of the integrity of the paper, in view of the mandate of the statute that contracts may not be sold at a higher price if sold *with recourse* or with a repurchase contract than if sold *without recourse*, and discriminating against McHenry Chevrolet Co. Inc. which sells its paper to G. M. A. C. supported by its repurchase agreement (Record, pp. 52-54), and in favor of those retail sellers who sell their paper without recourse (Record, pp. 63-64); that Appellee will be restricted in the sale of its retail instalment contracts by reason of the effect of Section 15-d of the Act (Record, p. 20) in fixing the minimum amount which may be paid for such contracts by

G. M. A. C. or any other finance company; that Appellee will be subject to severe penalties for *any* violation of the provisions of the Act and to a multiplicity of prosecutions therefor, the Act providing for a penalty of not more than $1,000 or imprisonment for not more than one year or both, upon conviction for each such violation (Section 29 of the Act; Record, p. 47).

Although Appellants denied the allegations of paragraph 2 of the Complaint, the record shows no evidence in support of this denial or of any of the allegations referred to in the last preceding paragraph of this Memorandum; on the other hand, the findings of fact *support* the jurisdictional allegations (McHenry Findings Nos. 1, 2 and 3, Record, pp. 47-49).

This Court has held that where an allegation of the jurisdictional amount is challenged, the burden of proving the lack of jurisdiction rests upon the parties challenging the jurisdiction. Thus in *Hunt* v. *N. Y. Cotton Exchange*, 205 U. S. 322, this Court said at page 333:

> "On the issue presented by the plea the burden of proof was upon the appellant (the defendant below) and he was required to establish by a preponderance of the evidence that the amount involved was less than the jurisdictional amount."

To the same effect, see:

Healy v. *Ratta*, 292 U. S. 263.

B. The record establishes that the value of the business of the Complainant is in excess of $3,000; the jurisdictional requirement is therefore met under the test laid down by the decisions of this Court.

The complaint alleges that the net worth of the Complainant's business is in excess of $3,000 (Complaint paragraph Twelfth; McHenry Record, pp. 6-7), and the findings of fact (McHenry Finding No. 2, Record, p. 49) support this allegation. The finding in question reads as follows:

> "During the time it has been in said business, complainant has sold approximately 1,200 automobiles, new and used, of which 481 were sold by it during the first five months of the year 1935, in the aggregate retail price of approximately $164,000. Based on orders and sales prospects, complainant expects to sell approximately 495 cars in the period of six months expiring at the close of the year 1935. The net worth of the business of complainant is in excess of $3,000.00."

This Court has held that jurisdiction is to be tested by the value of the object or right to be protected against interference, regardless of the financial injury which might be inflicted upon the Complainant by interference with that object or right, and regardless of whether the interference arises from the acts of private parties or the acts of officers of a State. It is the value of the business and the rights of property inherent in the business the interference with which Complainant is seeking to have enjoined which tests the sufficiency of the jurisdictional averment, and since the Record in this case establishes without contradiction that

the value of Complainant's business exceeds the sum of $50,000 and that such business will be materially affected, restricted or even suppressed through enforcement of the Act, it follows, on this test, that the jurisdictional requirement has been fulfilled.

The cases in point are the following:

Healy v. *Ratta,* 292 U. S. 263;
Hunt v. *New York Cotton Exchange,* 205 U. S. 322;
Glenwood Light Co. v. *Mutual Light Co.,* 239 U. S. 121;
Berryman v. *Whitman College,* 222 U. S. 334;
Bitterman v. *Louisville & Nashville R. Co.,* 207 U. S. 205.

In the case at bar the relief sought is an injunction against the interference with Appellee's business which will result from the enforcement of a state statute alleged to deprive Appellee of its property without due process of law. As stated by this Court in *Glenwood Light Co.* v. *Mutual Light Co., supra,* at page 126:

> "Complainant sets up a right to maintain and operate its plant and conduct its business free from wrongful interference by defendant. This right is alleged to be of a value in excess of the jurisdictional amount, and at the hearing no question seems to have been made but that it has such value. The relief sought is the protection of that right, now and in the future, and the value of that protection is determinative of the jurisdiction."

Similarly in the case of *Healy* v. *Ratta, supra,* this Court said, at page 269:

> "Where a challenged statute commands the suppression or restriction of a business without reference to the payment of any tax, the right to do the business, or the injury to it, is the matter in controversy."

In the case of *Bitterman* v. *Louisville & Nashville R. Co.*, 207 U. S. 205, the same principle was enunciated by this Court, which said at page 225:

> "Besides the substantial character of the jurisdictional averment in the bill is to be tested, not by the mere immediate pecuniary damage resulting from the acts complained of, but by the value of the business to be protected and the rights of property which the complainant sought to have recognized and enforced."

Respectfully submitted,

JOHN THOMAS SMITH,
PHILLIP W. HABERMAN,
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STANLEY B. ECKER,
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Counsel for Appellee.

April 3, 1936.

NOTE: Copies of this Memorandum have been mailed to counsel for Appellants. Although it has no bearing on the subject matter of this Memorandum the attention of the Court is respectfully directed to the typographical error which appears in Paragraph Eighth of the McHenry Complaint (McHenry Record p. 4, 9th line at the top of the page) where "Article 4 of the Constitution of the State of Indiana" is referred to—instead of Section 1 of Article 3. The Complaint in the G. M. A. C. case correctly refers to the Section in question (G. M. A. C. Record p. 3; Article Sixth of Complaint),—and the briefs filed in the lower court as well as the brief filed on this appeal make correct reference to the Article of the Constitution of Indiana which is set forth at length in the Appendix to the brief (p. 58).

SUPREME COURT OF THE UNITED STATES.

No. 710.—October Term, 1935.

Paul V. McNutt, Governor of the State of Indiana, et al., Appellants, *vs.* McHenry Chevrolet Co., Inc. } Appeal from the District Court of the United States for the Southern District of Indiana.

[May 18, 1936.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This is a companion case to No. 709, *McNutt* v. *General Motors Acceptance Corporation*, decided this day. Respondent, McHenry Chevrolet Co., Inc., is a dealer, selling automobiles at retail for cash or on the installment plan. It brought this suit to restrain the enforcement of Chapter 231 of the Acts of 1935 of the General Assembly of Indiana, providing for the regulation of the business of retail installment sales. Respondent assailed the Act as depriving it of its property without due process of law and denying it the equal protection of the laws contrary to the Fourteenth Amendment. The District Court granted a permanent injunction, and a direct appeal lies.

The allegation of the complaint that the matter in controversy exceeds the sum of $3,000 in value, exclusive of interest and costs, was denied by the answer. In support of the general jurisdictional allegation, respondent refers to the facts, as found by the District Court or not questioned by appellants, that the net worth of its business is in excess of $3,000; that it has on hand cars of the combined value of $16,000; that in the five months expiring May 31, 1935, it sold 481 cars, the aggregate retail prices of which amounted to about $164,000; that a substantial majority of its sales—about 65 per cent. during the first five months of 1935—consisted of installment or time sales; that based upon orders and criteria commonly employed to forecast future sales, it expected to sell approximately 330 cars in June and July of 1935, and 495 cars during the second six months of that year. Respondent also refers to allegations of its complaint that its present and future earnings and the conduct of its business would be rendered uncertain by

reason of the risk involved in making future commitments for the purchase of automobiles and the inability to obtain future commitments for the resale of such automobiles and for those on hand, and for the sale of retail installment contracts covering the automobiles on hand, as well as cars which might be ordered, to the General Motors Acceptance Corporation or any other finance company. These allegations were put in issue.

The District Court made findings with respect to the character and extent of respondent's business but the record contains no finding or evidence showing the amount of the loss, if any, which would be caused by the regulations assailed.

Respondent contends that the burden of proving the lack of jurisdiction rested upon those challenging the jurisdiction. We have considered and overruled the similar contention in our opinion in *McNutt* v. *General Motors Acceptance Corporation, supra.* In this aspect we find no substantial difference between the two cases.

The decree of the District Court is reversed and the cause is remanded with directions to dismiss the bill of complaint.

It is so ordered.

Mr. Justice STONE took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.